MONTANA ADMINISTRATIVE REGISTER

2021 ISSUE NO. 24
DECEMBER 23, 2021
PAGES 1815-2006

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.310, 2.59.315, 2.59.705, 2.59.1201, 2.59.1515, 2.59.1701, and 2.59.1707 pertaining to standardized forms and procedures of the NMLS for consumer loan licenses, escrow business licenses, sales finance company licenses, and deferred deposit lender licenses, consumer loan license surrender, definitions for mortgage licensees, and revocation, suspension, or surrender of mortgage licenses; and the repeal of 2.59.313, 2.59.314, 2.59.316, 2.59.708, 2.59.709, 2.59.710, 2.59.711, 2.59.1204, 2.59.1205, 2.59.1206, 2.59.1207, 2.59.1517, 2.59.1518, 2.59.1519, 2.59.1520, and 2.59.1708 pertaining to initial applications through NMLS for consumer loan licenses, escrow business licenses, sales finance company licenses, and deferred deposit lender licenses, consumer loan license amendments and fees, escrow business license amendments, license surrender, and fees, sales finance company license amendments, license surrender, and fees, and deferred deposit lender license amendments, license surrender, and fees, and table funding requiring licensure for mortgage licensees	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 11, 2022, the Department of Administration proposes to amend and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on January 4, 2022, to advise us of the nature of the accommodation that you need.

Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.59.310 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE ~~NATIONWIDE MULTISTATE LICENSING SYSTEM (~~NMLS~~)~~ (1) The NMLS Policy Guidebook dated ~~July 23, 2012~~ September 27, 2021, is ~~approved and~~ adopted by reference~~. It can be found at http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf~~ and available on the NMLS website at mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.

(2) ~~The following standardized NMLS forms relating to consumer loan licensing are approved and adopted by reference:~~ Except as provided in ARM 2.59.312, the NMLS deadlines, policies, procedures, and processes for all licensing-related actions, changes, and reports are adopted and available at mortgage.nationwidelicensingsystem.org/.

~~(a) NMLS company form dated September 12, 2015;~~

~~(b) NMLS branch form dated March 31, 2014; and~~

~~(c) NMLS individual form dated September 12, 2016.~~

~~(3) The following state-specific forms on the NMLS are approved and adopted by reference:~~

~~(a) Montana consumer loan license new application checklist dated October 7, 2016;~~

~~(b) Montana consumer loan license amendment checklist dated August 31, 2015;~~

~~(c) Montana consumer loan license surrender checklist dated September 8, 2016;~~

~~(d) Montana consumer loan branch new application checklist dated August 31, 2015;~~

~~(e) Montana consumer loan branch amendment checklist dated August 31, 2015; and~~

~~(f) Montana consumer loan branch surrender checklist dated August 31, 2015.~~

(3) Members of the public can look up the current license status, license number, states of licensure, contact information, and regulatory history of any consumer loan licensee at nmls.consumeraccess.org. If an entity is not listed on NMLS consumer access, it does not hold a consumer loan license issued by the department.

(4) ~~For renewal, companies, branches, and individuals must go to the NMLS home page (mortgage.nationwidelicensingsystem.org) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.~~ All applicants for a consumer loan license shall use the NMLS-approved forms and

checklists for all licensing-related activities, including but not limited to initial applications, renewals, amendments, surrenders, and reports.

~~(5) Copies of the standardized NMLS forms are available on the NMLS web site at http://mortgage.nationwidelicensingsystem.org/slr/PublishedStateDocuments/MT-Consumer_Loan_License-Company-New-App-Checklist.pdf. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically.~~

AUTH: 32-5-209, 32-5-401, MCA
IMP: 32-5-201, 32-5-209, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department has identified changes to rules that will streamline regulation and cut red tape. Some of the proposed amendments are technical in nature, such as amending punctuation or updating authority and implementation citations to accurately reflect all statutes implemented through the rules and to provide the complete sources of the department's rulemaking authority.

The department proposes to amend ARM 2.59.310, 2.59.315, 2.59.705, 2.59.1201, and 2.59.1515 to adopt the NMLS-approved forms and checklists for all licensing-related activities, including but not limited to initial applications, renewals, amendments, surrenders, and reports as well as the NMLS deadlines, policies, procedures, and processes for all licensing-related actions, changes, and reports.

The department is updating the website address of the NMLS, the version date of the NMLS Policy Guidebook, and the verbiage in the catchphrase. It is not necessary to include the full name of the Nationwide Multistate Licensing System as NMLS is defined in 32-9-103, MCA. In ARM 2.59.310, 2.59.705, 2.59.1201, and 2.59.1515, the department proposes to adopt new (3) to make clear that all relevant license status information on consumer loan, escrow business, sale finance company, and deferred deposit lender licensees is available on the NMLS consumer access website. For consumers who are unfamiliar with NMLS, new (3) explains that entities not listed on NMLS consumer access are not licensed by the department.

2.59.315 LICENSE SURRENDER ~~(1) A licensee shall submit a license surrender request through the NMLS. If the surrender is accepted by the department, the license will be shown as "terminated-surrendered/cancelled" on the NMLS.~~

(2) and (3) remain the same but are renumbered (1) and (2).

AUTH: 32-5-205, 32-5-209, MCA
IMP: 32-5-205, 32-5-209, MCA

2.59.705 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE ~~NATIONWIDE MULTISTATE LICENSING SYSTEM (~~NMLS~~)~~ (1) The NMLS Policy Guidebook dated ~~July 23, 2012~~ September 27, 2021, is ~~approved and~~ adopted by reference~~. It can be found at mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/N~~

~~MLS%20Guidebook%20for%20Licensees.pdf~~ and available on the NMLS website at mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.

(2) ~~The following standardized NMLS forms relating to escrow business licensing are approved and adopted by reference:~~ Except as provided in ARM 2.59.707, the NMLS deadlines, policies, procedures, and processes for all licensing-related actions, changes, and reports are adopted and available at mortgage.nationwidelicensingsystem.org/.

~~(a) NMLS company form dated September 12, 2015;~~

~~(b) NMLS branch form dated March 31, 2014; and~~

~~(c) NMLS individual form dated September 12, 2016.~~

~~(3) The following state-specific forms on the NMLS are approved and adopted by reference:~~

~~(a) Montana escrow business company new application checklist dated January 23, 2017;~~

~~(b) Montana escrow business company amendment checklist dated January 23, 2017; and~~

~~(c) Montana escrow business company surrender checklist dated September 1, 2015.~~

(3) Members of the public can look up the current license status, license number, states of licensure, contact information, and regulatory history of any escrow business licensee at nmls.consumeraccess.org. If an entity is not listed on NMLS consumer access, it does not hold an escrow business license issued by the department.

(4) ~~For renewal, companies, branches, and individuals must go to the NMLS home page (mortgage.nationwidelicensingsystem.org) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.~~ All applicants for an escrow business license shall use the NMLS-approved forms and checklists for all licensing-related activities, including but not limited to initial applications, renewals, amendments, surrenders, and reports.

~~(5) The standardized NMLS forms are available on the NMLS web site at mortgage.nationwidelicensingsystem.org/slr/PublishedStateDocuments/MT-Consumer_Loan_License-Company-New-App-Checklist.pdf. All standardized forms submitted to the department must be accessed through NMLS and submitted electronically.~~

AUTH: 32-7-108, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

2.59.1201 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE ~~NATIONWIDE MULTISTATE LICENSING SYSTEM (~~NMLS~~)~~ (1) The NMLS Policy Guidebook dated ~~July 23, 2012~~ September 27, 2021, is ~~approved and~~ adopted by reference~~. It can be found at http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf~~ and available on the NMLS website at mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.

(2) ~~The following standardized NMLS forms relating to licensing are approved and adopted by reference:~~ Except as provided in ARM 2.59.1203, the NMLS deadlines, policies, procedures, and processes for all licensing-related actions, changes, and reports are adopted and available at mortgage.nationwidelicensingsystem.org/.

~~(a) NMLS company form dated March 31, 2014;~~

~~(b) NMLS branch form dated March 31, 2014; and~~

~~(c) NMLS individual form dated July 30, 2014.~~

~~(3) The following state-specific forms on the NMLS are approved and adopted by reference:~~

~~(a) Montana sales finance company new application checklist dated February 11, 2016;~~

~~(b) Montana sales finance company amendment checklist dated June 2, 2014;~~

~~(c) Montana sales finance company surrender checklist dated May 21, 2014;~~

~~(d) Montana sales finance company branch new application checklist dated June 23, 2015;~~

~~(e) Montana sales finance company branch amendment checklist dated June 2, 2014; and~~

~~(f) Montana sales finance company branch surrender checklist dated June 21, 2014.~~

(3) Members of the public can look up the current license status, license number, states of licensure, contact information, and regulatory history of any sales finance company licensee at nmls.consumeraccess.org. If an entity is not listed on NMLS consumer access, it does not hold a sales finance company license issued by the department.

(4) ~~For renewal, companies, branches, and individuals must go to the NMLS home page (http://mortgage.nationwidelicensingsystem.org) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.~~ All applicants for a sales finance company license shall use the NMLS-approved forms and checklists for all licensing-related activities, including but not limited to initial applications, renewals, amendments, surrenders, and reports.

~~(5) Copies of the standardized NMLS forms are available on the NMLS web site at http://mortgage.nationwidelicensingsystem.org/slr/PublishedStateDocuments/MT-Sales_Finance_Company_License-Company-New-App-Checklist.pdf. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically.~~

AUTH: 31-1-211, 31-1-223, MCA
IMP: 31-1-223, MCA

2.59.1515 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE ~~NATIONWIDE MULTISTATE LICENSING SYSTEM (~~NMLS~~)~~ (1) The NMLS Policy Guidebook dated ~~July 23, 2012~~ September 27, 2021, is ~~approved and~~ adopted by reference~~. It can be found at http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResour~~

~~ces/NMLS%20Guidebook%20for%20Licensees.pdf~~ and available on the NMLS website at mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.

(2) ~~The following standardized NMLS forms relating to licensing are approved and adopted by reference:~~ Except as provided in ARM 2.59.1516, the NMLS deadlines, policies, procedures, and processes for all licensing-related actions, changes, and reports are adopted and available at mortgage.nationwidelicensingsystem.org/.

~~(a) NMLS company form dated March 31, 2014;~~

~~(b) NMLS branch form dated March 31, 2014; and~~

~~(c) NMLS individual form dated July 30, 2014.~~

~~(3) The following state-specific forms on the NMLS are approved and adopted by reference:~~

~~(a) Montana deferred deposit lender new application checklist dated August 31, 2015;~~

~~(b) Montana deferred deposit lender amendment checklist August 31, 2015;~~

~~(c) Montana deferred deposit lender surrender checklist dated September 1, 2015;~~

~~(d) Montana deferred deposit lender branch new application checklist dated September 1, 2015;~~

~~(e) Montana deferred deposit branch amendment checklist dated June 2, 2014; and~~

~~(f) Montana deferred deposit branch surrender checklist dated September 1, 2015.~~

(3) Members of the public can look up the current license status, license number, states of licensure, contact information, and regulatory history of any deferred deposit lender licensee at nmls.consumeraccess.org. If an entity is not listed on NMLS consumer access, it does not hold a deferred deposit lender license issued by the department.

(4) ~~For renewal, companies, branches, and individuals must go to the NMLS home page (http://mortgage.nationwidelicensingsystem.org) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.~~ All applicants for a deferred deposit lender license shall use the NMLS-approved forms and checklists for all licensing-related activities, including but not limited to initial applications, renewals, amendments, surrenders, and reports.

~~(5) Copies of the standardized NMLS forms are available on the NMLS web site at http://mortgage.nationwidelicensingsystem.org/slr/PublishedStateDocuments/MT-Deferred_Deposit_Lender_License-Company-New-App-Checklist.pdf. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically.~~

AUTH: 31-1-702, ~~31-1-705,~~ 31-1-710, MCA
IMP: 31-1-705, 31-1-710, MCA

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Act and this subchapter, the following definitions apply:

(1) through (9) remain the same.

~~(10) "Table funding" means the closing of a loan naming a mortgage broker, a mortgage broker's business entity, or a loan originator as the lender on the mortgage loan note, which note is then sold to another party within three business days of closing.~~

(11) and (12) remain the same but are renumbered (10) and (11).

AUTH: 32-9-109, 32-9-121, 32-9-130, MCA
IMP: 32-9-109, 32-9-116, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-133, 32-9-166, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 2.59.1701 to remove (10) which defines table funding. The definition was used in ARM 2.59.1708 which is proposed to be repealed in this rule notice. If ARM 2.59.1708 is repealed, the definition of table funding is no longer needed.

2.59.1707 REVOCATION, SUSPENSION, OR SURRENDER OF LICENSE

(1) and (2) remain the same.

(3) A licensee who surrenders a license while not in compliance with a conditional agreement cannot reinstate the license or obtain a new license for a period of three years after the surrender, unless the conditions that led to the conditional license have been fully resolved.

(3) and (4) remain the same but are renumbered (4) and (5).

AUTH: 32-9-130, MCA
IMP: 32-9-126, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 2.59.1707 to allow a licensee with a conditional agreement to surrender a license during the conditional agreement period, whether or not the licensee is in compliance with the conditions of the agreement. The department primarily offers conditional agreements to mortgage loan originator (MLO) applicants or existing licensees when it is not clear that they initially meet the financial responsibility standards identified in ARM 2.59.1740. A conditional agreement allows licensure on the condition that the licensee address the licensee's financial situation and report progress every six months to the department over the period of the agreement.

Historically, the department has not allowed licensees with conditional agreements to surrender their MLO licenses unless they were in compliance with the agreement terms or no longer in the mortgage industry. The intention was to discourage an applicant from obtaining a license by entering into a conditional agreement, doing business under the license, and then surrendering the conditional license without satisfying the agreement conditions. Conditional licensees were required to either honor their agreements to maintain their license or face suspension. Most conditional licensees do not want their licenses suspended because license suspensions are public information accessible via the NMLS and must be reported in the disclosure questions on future licensing and/or renewal

applications. A person whose license is suspended may have difficulty getting licensed in another state or obtaining employment.

Beginning in March 2020, at the start of the COVID-19 pandemic, the department temporarily amended its guidelines to allow conditional licensees to surrender their licenses for any reason, and the licenses were not suspended. As the conditions of the pandemic wind down, the guidelines were revisited, and the department determined its concerns about conditional licensees surrendering licenses without meeting the conditions of their agreement could be addressed without a license suspension. Instead, in such circumstances, the department is proposing to allow those who have not satisfied agreement conditions to surrender their licenses with the limitation that they may not obtain another license for three years unless they have resolved the circumstances that led to conditional licensure. The three-year timeframe was chosen to allow licensees sufficient time to address their financial situation with the expectation that by the end of three years, they could reapply and satisfy the financial responsibility requirements for licensure without entering into new conditional agreements. The three-year limitation should not apply if a person who previously surrendered a conditional license has fully resolved the circumstances that led the department to impose conditions, and the department has no other reason to deny or condition licensure.

4. The department proposes to repeal the following rules:

2.59.313 INITIAL LICENSE APPLICATION THROUGH NMLS

AUTH: 32-5-201, 32-5-209, MCA
IMP: 32-5-201, 32-5-209, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes to:

- repeal ARM 2.59.313, 2.59.314, and 2.59.316 and consolidate any portions of those rules that need to remain within the proposed amended ARM 2.59.310;
- repeal ARM 2.59.708, 2.59.709, 2.59.710, and 2.59.711 and consolidate any portions of those rules that need to remain within the proposed amended ARM 2.59.705;
- repeal ARM 2.59.1204, 2.59.1205, 2.59.1206, and 2.59.1207 and consolidate any portions of those rules that need to remain within the proposed amended ARM 2.59.1201; and
- repeal ARM 2.59.1517, 2.59.1518, 2.59.1519, and 2.59.1520 and consolidate any portions of those rules that need to remain within the proposed amended ARM 2.59.1515.

These revisions will streamline the regulatory process, cut red tape, and make it easier for applicants for consumer loan, escrow business, sales finance, and deferred deposit loan licenses to access relevant licensing information by placing related material in one rule. License applicants can go to the NMLS for all actions

necessary to apply for, maintain, make changes to, and surrender their licenses. This "one-stop shop" centralizes all information and actions related to licenses issued by the department in one place. The NMLS allows everyone (applicants, licensees, and members of the public) quick and easy online access to licensing data and streamlining the administrative rules will help people find the applicable rules.

2.59.314 AMENDMENTS

AUTH: 32-5-209, MCA
IMP: 32-5-209, MCA

2.59.316 FEES

AUTH: 32-5-201, 32-5-209, MCA
IMP: 32-5-201, 32-5-209, MCA

2.59.708 INITIAL LICENSE APPLICATION THROUGH NMLS

AUTH: 32-7-109, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

2.59.709 AMENDMENTS

AUTH: 32-7-109, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

2.59.710 LICENSE SURRENDER

AUTH: 32-7-112, MCA
IMP: 32-7-112, MCA

2.59.711 FEES

AUTH: 32-7-110, 32-7-112, MCA
IMP: 32-7-110, 32-7-112, MCA

2.59.1204 INITIAL LICENSE APPLICATION THROUGH NMLS

AUTH: 31-1-221, 31-1-223, MCA
IMP: 31-1-221, 31-1-223, MCA

2.59.1205 AMENDMENTS

AUTH: 31-1-223, MCA
IMP: 31-1-223, MCA

2.59.1206 LICENSE SURRENDER

AUTH: 31-1-223, MCA
IMP: 31-1-223, MCA

2.59.1207 FEES

AUTH: 31-1-223, MCA
IMP: 31-1-223, MCA

2.59.1517 INITIAL LICENSE APPLICATION THROUGH NMLS

AUTH: 31-1-705, 31-1-710, MCA
IMP: 31-1-705, 31-1-710, MCA

2.59.1518 AMENDMENTS

AUTH: 31-1-710, MCA
IMP: 31-1-710, MCA

2.59.1519 LICENSE SURRENDER

AUTH: 31-1-710, MCA
IMP: 31-1-710, MCA

2.59.1520 FEES

AUTH: 31-1-705, 31-1-706, 31-1-710, MCA
IMP: 31-1-705, 31-1-706, 31-1-710, MCA

2.59.1708 TABLE FUNDING REQUIRES LICENSURE

AUTH: 32-9-130, MCA
IMP: 32-9-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal ARM 2.59.1708 as this rule dates from the time before the division licensed mortgage lenders. This rule is no longer necessary, because now an entity that is table funding would be licensed as a lender.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930 or by e-mail to banking@mt.gov. Comments must be received no later than 5:00 p.m., January 20, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., January 4, 2022.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 608 persons based on the combined total of 210 consumer loan companies, 9 escrow business companies, 122 sales finance companies, 242 mortgage brokers, and 5,505 mortgage loan originators licensed in this state. There are no licensed deferred deposit lenders in this state.

8. An electronic copy of this proposal notice is available through the department's website at https://doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. The department has determined that under 2-4-111, MCA, the proposed amendment and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through LI pertaining to mutual savings and loan associations and the repeal of ARM 2.59.201 pertaining to savings and loan associations – real estate and 2.59.202 pertaining to examination and supervisory fees for savings and loan associations	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On January 12, 2022, at 1:30 p.m., the Department of Administration will hold a public hearing in Room 342 of the Park Avenue Building located at 301 South Park Avenue in Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on December 29, 2021, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Department of Administration, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED MUTUAL ASSOCIATION (1) One or more individual incorporators desiring to organize a mutual association shall file with the department, an application for a certificate of authorization for a state-chartered mutual association. The department adopts and incorporates by reference:

(a) the Interagency Charter and Federal Deposit Insurance Application dated August 31, 2019, as the form that shall be completed when applying for a certificate of authorization; and

(b) the Interagency Biographical and Financial Report dated April 30, 2017, for use by individuals in conjunction with the Interagency Charter and Federal Deposit Insurance Application. The application and biographical and financial report are available at the department's website at banking.mt.gov.

(2) An application fee of $10,000 shall be paid to the department at the time of application and thereafter shall not be refundable in whole or in part.

(3) With the application, the applicant must submit:

(a) the proposed articles of incorporation and bylaws set forth in 32-2-805 through 32-2-807, MCA;

(b) an application for reservation of a name in accordance with 35-14-402, MCA, if reservation is desired by the incorporators and has not been previously filed; and

(c) information to demonstrate the proposed mutual association will satisfy the following requirements:

(i) a persuasive showing that there is a reasonable public necessity and demand for a new mutual association at the proposed location;

(ii) that the mutual association will be managed by persons of good moral character and financial integrity who have sufficient management experience to ensure that the mutual association will be operated safely and soundly;

(iii) a persuasive showing that the new mutual association will have sufficient volume of business to ensure solvency and that establishment of the new mutual association organized under the laws of this state will be in the public interest; and

(iv) the proposed minimum amount of initial capital contribution to be deposited, which must be set by the commissioner.

(4) In the event that an application is incomplete in any respect or if additional information is required, the applicants will be so notified by the department and allowed up to 60 days in which to perfect the application or provide additional information. An extension of this 60-day period may be obtained from the department by showing good cause why it should be extended.

(5) The department may request additional information from an applicant if, in its discretion, additional information is needed to reach a decision on the application.

AUTH: 32-2-801, MCA
IMP 32-2-801, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2021 Montana Legislature enacted Chapter 431, Laws of 2021 (Senate Bill 308), repealing the Building and Loan Act (Title 32, chapter 2, MCA) and implementing the Mutual Savings and Loan Association Act. Senate Bill 308 was signed by the Governor on May 7, 2021 and became effective on October 1, 2021. The department determined it is reasonably necessary to adopt New Rules I through LI and repeal certain rules to implement the legislation.

Senate Bill 308 was modeled after the Montana Bank Act to the greatest extent possible. In some cases, there are differences between banks and mutual associations and to that extent, the provisions of the Montana Bank Act were modified to recognize the unique characteristics of mutual associations in Senate Bill 308.

Likewise, to promote efficiency in administration and consistency in the financial industry, these rules are modeled after the rules adopted under the Montana Bank Act. In some cases, the proposed rules for mutual associations differ from banking rules in recognition of the differences between banks and mutual associations.

STATEMENT OF REASONABLE NECESSITY: To aid in compliance and administration, to the extent possible, the provisions in proposed New Rule I were made consistent with the equivalent application rule for state-chartered banks and the application forms used to apply for a state charter in other states. The Interagency Charter and Federal Deposit Insurance Application and the Interagency Biographical and Financial Report have been developed by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation as the uniform charter application forms for all financial institutions seeking to become chartered by any regulatory agency. Financial institutions include national banks, state banks, federal savings banks or associations, and state savings associations. The department believes these forms provide an efficient and uniform method to acquire the information necessary to make a decision concerning whether to charter a financial institution and seeks to adopt the application and biographical statement and financial report as the uniform forms to be used to apply for a state mutual association charter in Montana.

The department proposes to set the fee at $10,000 for new mutual association charters because the department's senior banking and legal staff will spend a significant amount of time reviewing and analyzing a new mutual association application. The department is self-funded through assessments on banks, mutual associations, and credit unions as well as licensing fees for other programs the department administers. The department receives no general fund appropriation. The application fee is necessary to make the fee commensurate with the associated costs. At this time, the department does not anticipate any new charters, so no known person will be affected by this fee and the cumulative amount anticipated for all persons is zero.

The department proposes (3) to demonstrate the applicant meets the standards listed in 32-2-801, MCA.

Section (4) allows the applicant 60 days to provide information requested by the department to complete the application. If applicants require more time, the department will allow an additional 60 days if the applicant submits a request and shows good cause for the needed extension.

The department proposes (5) to allow the department to request additional information required to make a decision on the application. It is preferable to allow the department to request additional information instead of denying the application for lack of evidence.

NEW RULE II PERSUASIVE SHOWING OF REASONABLE PUBLIC NECESSITY AND DEMAND (1) In determining whether a reasonable public necessity and demand is established in any case, the department requires that these words be given a meaning which will promote the public interest of the community as a whole in having a sound banking structure, reasonably competitive and adequate for the needs of the community.

(2) In making this determination the following are among the factors which the department may consider:

(a) the number of mutual associations already serving the area in which the proposed mutual association would locate;

(b) the size of the area;

(c) the population of the area;

(d) the wealth of residents of the area;

(e) the commercial and industrial development of the area;

(f) the socioeconomic trends of the area;

(g) the adequacy of the services being provided by existing mutual associations compared to the needs of residents and the services to be offered by the proposed mutual association, including a detailed list of banking services that will be offered the community to be served by the new mutual association;

(h) the capability of existing mutual associations to handle potential growth of the area;

(i) the convenience of the location of existing mutual associations to residents of the area as compared to convenience of the proposed mutual association;

(j) the size of financial institutions in the area;

(k) the history of financial institutions in the area;

(l) an indication of the support the proposed mutual association could reasonably expect to receive from representative segments of the businesses and residents of the area; and

(m) the probability of the success of the proposed mutual association.

AUTH: 32-2-801, MCA
IMP 32-2-801, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-801(2)(c)(i), MCA, requires an applicant to demonstrate that the proposed mutual association will satisfy the requirement for a persuasive showing of reasonable public necessity and demand. That requirement has been defined for purposes of the Montana Bank Act applications for a new charter. The same definition is proposed to be adopted here. The department strives to be consistent with the Montana Bank Act wherever possible.

NEW RULE III MANAGEMENT OF PROPOSED MUTUAL ASSOCIATION

(1) To establish reasonable assurance that the mutual association will be safely and soundly operated as required by 32-2-801, MCA, and recognizing that the ultimate responsibility for management of a mutual association reposes in its board of directors, the department will not issue a certificate of authority to a proposed mutual association if the department finds that any one or more of the proposed directors of the new mutual association has questionable moral character or lack of financial integrity and, therefore, does not command the confidence of the community in which the proposed mutual association is to be located.

(2) In the event that the application for a state mutual association charter does not include the name and qualifications of the proposed managing officer, the department will direct that if a charter is to be issued for the proposed mutual association it shall be conditioned upon the submission of the name and qualifications of a proposed managing officer to the department at least 60 days prior to the opening of the mutual association and that the department find the proposed managing officer unobjectionable.

AUTH: 32-2-801, MCA
IMP 32-2-801, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-801(2)(c)(ii), MCA, requires an applicant to demonstrate that the proposed mutual association will satisfy the requirement that the mutual association will be managed by persons of good moral character and financial integrity who have sufficient management experience to ensure that the mutual association will be operated safely and soundly. That requirement was defined previously for purposes of the Montana Bank Act applications for a new charter. The same definition is proposed to be adopted here. The department strives to be consistent with the Montana Bank Act wherever possible.

NEW RULE IV CAPITAL ADEQUACY OF PROPOSED NEW MUTUAL ASSOCIATIONS (1) The applicant must provide a reasonable assurance that the proposed new mutual association will have adequate initial paid-in capital sufficient to:

(a) absorb initial operating losses under foreseeable business conditions;

(b) permit the proposed investment in building, land, furniture, and fixtures within the limitation of 100% of capital and surplus as imposed by 32-2-933, MCA;

(c) provide protection for depositors' funds to the same extent that the average of all insured mutual associations in the proposed mutual association's peer group provides capital protection, measured by the most current peer group data available on total capital accounts as a percentage of total assets. The proposed mutual association's reasonably estimated total assets at the end of its first three years of operation shall be the basis upon which this standard shall be projected; and

(d) enable the mutual association to furnish competitive services that will ensure an amount of business sufficient to assure its success.

AUTH: 32-2-801, MCA
IMP 32-2-801, 32-2-808, 32-2-933, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-801(2)(c)(iv), MCA, requires an applicant to demonstrate that the proposed mutual association will satisfy the requirement that the applicant will have the proposed minimum amount of initial capital contribution to be deposited, which must be set by the commissioner. This rule is consistent with the rule for new bank charters in Montana. The department strives to be consistent with the Montana Bank Act wherever possible. The applicant must provide reasonable assurances that it will be able to deposit the minimum initial capital contribution when that amount is set by the commissioner.

NEW RULE V MUTUAL ASSOCIATIONS - FDIC INSURANCE REQUIRED

(1) To comply with 32-2-801 and 32-2-809, MCA, it has been determined by the department that it is in the public interest to require all mutual associations to be accepted by the Federal Deposit Insurance Corporation (FDIC) for the insurance of

deposits. The department will not issue a certificate of authorization to a proposed new mutual association unless:

(a) the department has received official notice that the proposed mutual association has been accepted for insurance of deposits; or

(b) the department has received satisfactory assurance from the FDIC that the proposed mutual association will be accepted for insurance when the proponents comply with certain stated minor requirements imposed by the FDIC. Such "minor requirements" must be of a type and character which the department determines can be promptly complied with by the proponents without serious difficulty.

AUTH: 32-2-801, MCA
IMP 32-2-801, 32-2-809, MCA

STATEMENT OF REASONABLE NECESSITY: Financial institutions in Montana must have FDIC insurance. In order to charter new financial institutions in Montana, the applicants must either have FDIC insurance or prove that the institution has received satisfactory assurance from the FDIC that the proposed mutual association will be accepted for insurance when the proponents comply with certain stated minor requirements imposed by the FDIC. This rule is the same as the rule for new bank charters in Montana. The department strives to be consistent with the Montana Bank Act wherever possible.

NEW RULE VI PRO FORMA STATEMENT (1) An operational projection shall be submitted as part of the application for new mutual association charters, in order to show that the new mutual association will remain solvent while meeting the requirements set forth in [New Rule IV]. The pro forma statement will include, at a minimum:

(a) a projected three-year comparative balance sheet and income projection;

(b) information on start-up costs, including legal fees, and other costs that may be amortized; and

(c) costs associated with fixed assets and their maintenance.

(2) The statement will reasonably estimate the volume of business the new mutual association anticipates in the first three-year period, and will show its reasons for believing it will develop such business aggregates.

AUTH: 32-2-801, MCA
IMP 32-2-801, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-801(2)(c)(vi), MCA, requires an applicant to provide any other information the commissioner requires by rule. The commissioner requires banks seeking a new charter to provide a pro forma statement of the operational costs for the first three years in order to show that the new institution will remain solvent while meeting the requirements set forth in statute and rule. That requirement has been defined for purposes of the Montana Bank Act applications for a new charter. The same requirement is proposed to be adopted here. The department strives to be consistent with the Montana Bank Act wherever possible.

NEW RULE VII CONVERSION OF A NATIONAL MUTUAL ASSOCIATION TO A STATE MUTUAL ASSOCIATION (1) Upon conversion:

(a) the resulting state mutual association succeeds, without other transfer, to all the rights and property of the converted mutual association and is subject to all the debts and liabilities of the converted mutual association in the same manner as if the resulting state mutual association itself had incurred them;

(b) all rights of creditors of the converted mutual association and all liens upon the converted mutual association's property are unimpaired by the transfer, provided that the liens are limited to the affected property immediately prior to the time when the conversion became effective;

(c) title to all real, personal, and mixed property owned by the converted mutual association is vested in the resulting state mutual association without reversion or impairment and without the necessity of any instrument of transfer;

(d) the resulting state mutual association has all the liabilities, duties, and obligations of the converted mutual association, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(e) any pending action or other judicial proceeding to which the converted mutual association was a party may continue to be prosecuted to final judgment, order, or decree as if the conversion had not occurred, or the resulting mutual association may be substituted as a party to the action or proceeding.

(2) Upon conversion, a resulting mutual association that is organized under the laws of this state:

(a) shall designate and operate a location of the converted mutual association as its main banking house; and

(b) may maintain the branch mutual associations and other offices previously maintained by the converted mutual association.

AUTH: 32-2-704, MCA
IMP: 32-2-816, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule makes clear the types of rights, duties, and obligations that transfer to the resulting state mutual association. It also makes clear that the converted mutual association may designate a location as its main banking house and maintain any other existing offices and branches as existed prior to conversion.

NEW RULE VIII FEE FOR CONVERSION OF A NATIONAL MUTUAL ASSOCIATION TO A STATE MUTUAL ASSOCIATION (1) The fee for conversion of a federal mutual savings association to a state mutual savings association is $1,500.00.

AUTH: 32-2-704, MCA
IMP: 32-2-816, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to establish a $1,500 fee for applications for conversion to a state charter. The

department proposes to set the fee at $1,500 because the department's senior banking and legal staff will spend a moderate amount of time reviewing and analyzing a conversion application. The department is self-funded through assessments on banks, mutual associations, and credit unions as well as licensing fees for other programs the department administers. The department receives no general fund appropriation. The application fee is necessary to make the fee commensurate with the associated costs. At this time, the department does not anticipate any conversions, so no known person will be affected by this fee and the cumulative amount anticipated for all persons is zero.

NEW RULE IX SEMIANNUAL ASSESSMENT (1) The department invoices mutual associations for semiannual assessments every June and December. The assessment is based on each institution's total assets provided in its previous March and September call reports.

(2) The fee is calculated based on the total assets of the mutual association multiplied by .0000375, plus the flat fee listed below.

Total Assets	Flat Fee ($)
$0 to $50 million	$0
Over $50 to $100 million	$3,000
Over $100 to $250 million	$5,000
Over $250 million to $1 billion	$7,500
Over $1 billion	$15,000

Example: Mutual association A reports total assets of $58,873,000 x .0000375 plus $3,000 equals $5,207.74.

(3) The assessment is due 30 days after each invoice date, or July 31 and January 31, whichever is later.

(4) The fee shall not exceed $300,000 for each semiannual assessment.

(5) In the event of a merger between Montana state-chartered mutual associations during the second or fourth quarter of the year, the assessment fee for the acquired institution must be paid by the surviving institution.

AUTH: 32-2-702, 32-2-704, MCA
IMP: 32-2-702, 32-2-704, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule will establish the formula for a semiannual assessment of state-chartered mutual associations and allow the department to recover its supervisory and examination costs. The department derived the formula by projecting the expenses of supervision of the state-chartered mutual associations at current levels and divided those expenses as evenly as possible among the state-chartered mutual associations. The flat fee is being imposed because larger institutions require more supervisory time than smaller institutions, and the flat fee is designed to reflect that.

At this time, there is one institution affected by this rule. If we use the total assets as of September 30, 2021, the latest data available, and assume zero asset

growth in the next year, the total assessment for one year for that institution would be $18,167.96.

The department proposes to include (4) to place a cap of $300,000 per semiannual assessment, for a total of $600,000 per year. The department anticipates the revenue generated by the assessments with this cap in place will be commensurate with the cost of supervising state-chartered mutual associations.

The department proposes to include (5) to address mutual associations that are acquired during the second or fourth quarter and are not in existence to pay the assessment fee by the subsequent assessment due date. For example, mutual association A filed their first quarter call report and subsequently merged into mutual association B effective April 25, 2021. The department sent out the assessment billing on July 1, 2021, which is based on the total assets from the first quarter call report. Mutual association A shows up in the list, but it no longer exists and therefore cannot remit the assessment. Mutual association B had also filed their first quarter call report but had not acquired Mutual association A yet. Therefore, the department performed services for Mutual association A for the assessment period, October 1, 2020 through March 31, 2021, without receiving reimbursement. In an effort to project revenue accurately and receive reimbursement for services performed, the department proposes the surviving entity pay the assessment fees of the acquired mutual association.

NEW RULE X ADOPTION OF EXAMINATION PROCEDURE (1) The department adopts the revised Uniform Financial Institution Rating System as one of its examination procedures. The edition adopted is the December 19, 1996, edition as published in the Federal Register at 61 Fed. Reg. 67021. It may be viewed at fdic.gov/news/news/financial/1996/fil96105.pdf.

AUTH: 32-2-704, MCA
IMP: 32-2-701, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to adopt the Uniform Financial Institution Rating System (UFIRS) as an effective internal supervisory tool for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special attention or concern.

The UFIRS was adopted by the Federal Financial Institutions Examination Council (FFIEC) on November 13, 1979. The agencies in the FFIEC are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau. The FFIEC recommended on December 9, 1996, that the all banking agencies adopt the updated rating system. The revised UFIRS became effective January 13, 1999, and was to be used in examinations of all commercial banks and thrifts commencing after that date.

The use of this system allows the department to be consistent with other federal regulators that examine mutual associations. This allows the regulators to use the same procedures when conducting joint examinations, which facilitates the

process for both the regulators and the mutual associations. It allows financial institutions to deal with one set of rules and one examination by two sets of regulators, which make examinations more efficient and less time consuming.

NEW RULE XI MERGER APPLICATION (1) The application to merge one or more mutual associations located in Montana or to merge two or more mutual associations doing business in this state must be in the following form:

MUTUAL ASSOCIATION MERGER APPLICATION

Any individual or entity desiring confidential treatment of specific portions of the application shall specifically identify the information for which they request confidentiality, separately bind it, and label it "Confidential." The individual or entity shall follow the same procedure for a request for confidential treatment for the subsequent filing of supplemental information to the application. Inquiries concerning the preparation and filing of this or any other application with the department should be directed to the Montana Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546.

1. State the exact corporate name and address of each mutual association participating in the merger, and the proposed names of the resultant mutual association.

2. State the name and address of, and the dates of publication in, the newspapers in which the required notice is published.

3. For the resultant mutual association, a list of the names of the directors and principal executive officers, their titles, including a brief resume of the educational background, banking experience, and other qualifications of each and an explanation of the extent of common management of the participating institution and the length of time such common ownership or management has existed.

4. The date on which the proposed merger is to occur.

5. Attach the following documents:

(a) the resolution or an authentic copy of the resolution, authorizing the merger adopted by a majority of the board of directors;

(b) the terms and conditions of the proposed merger;

(c) the manner and basis of converting the shares of each merging association into shares of the surviving association;

(d) a statement of any changes in the articles of incorporation of the surviving association to be effected by the merger;

(e) other provisions with respect to the proposed merger deemed necessary or desirable; and

(f) the proposed articles of merger and plan of merger.

(2) An application fee of $2,000 plus $200 for each mutual association involved in the merger must be paid to the department at the time of application and may not be refunded in whole or in part.

(3) If an application is incomplete in any respect, or if additional information is required, the department shall notify the applicant and the applicant will be allowed up to 30 days in which to perfect the application or to provide additional information. An extension of this 30-day period may be obtained from the department by showing

good cause why it should be extended. The department may delay processing, including extending the comment period for good cause.

(4) The application must be in letter form addressed to the commissioner of the department.

(5) The department will preliminarily approve or deny merger applications within 30 days of receiving a completed application.

(6) Within 90 days of the preliminary approval, the board of directors of the merging association shall submit the proposed merger to a vote of the members at any regular meeting or at any special meetings called for that purpose, after notice of the proposed merger has been given to all members entitled to vote thereon, in the manner provided in the bylaws. The notice of the meeting shall be in writing stating the purpose or purposes of the meeting and include or be accompanied by a copy or summary of the plan of merger. At the meeting, members may vote upon the proposed merger in person, or by written proxy, or by mailed ballot. The affirmative vote of the majority of the members voting thereon, shall be required for approval of the plan of merger. If the total vote of the association upon the proposed merger shall be less than 25% of the total membership of such association, the merger shall not be approved.

(7) Within 10 days of the membership vote, the board of directors shall certify the result to the department.

(8) Within 10 days after receipt of the certification, the department shall issue its final approval or denial of the application, based on the result of the membership vote.

AUTH: 32-2-704, MCA
IMP: 32-2-827, MCA

STATEMENT OF REASONABLE NECESSITY: The form of the application is being proposed because it is as consistent as possible with the form being used for banks, while recognizing the unique structure of mutual associations. Mutual associations do not have shareholders like banks do. Mutual associations are owned by their members. So, the transaction must be submitted to a membership vote in order to be approved. The rule sets forth the process to submit the merger proposal to the membership for a vote and the percentage of the membership necessary to approve the vote.

The process is designed to give the department the information it needs to give preliminary approval of the merger before it is taken to a membership vote. Obviously, if the department does not give preliminary approval, there is no need for a membership vote which is time-consuming and expensive. If the membership approves the merger, the department issues a final approval. If the membership denies the merger, the department would deny the merger application. The timeframes are selected to allow sufficient time to notice a meeting on the merger and hold it, to calculate the vote, and to have it certified by the board of directors, and to provide a deadline for the department to issue a final approval after the certification is received.

At this time, the department does not anticipate any mergers, so no known person will be affected by this fee and the cumulative amount anticipated for all persons is zero.

NEW RULE XII MERGER APPLICATION PROCEDURES (1) An application to merge one or more mutual associations located in Montana pursuant to 32-2-827, MCA, must be on the form in [New Rule XI].

(2) The application to merge must be filed with the department.

(3) The election and acknowledgment information satisfies these standards if it conforms to the following requirements:

(a) if the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided that the mutual association:

(i) maintains sufficient documentation to show that the customer received the short-form disclosures substantially similar to [New Rule XXXV(1)] and then affirmatively elected to purchase the contract;

(ii) mails to the customer the affirmative written election and written acknowledgment together with a long-form disclosure substantially similar to [New Rule XXXV(2)], within three business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the mutual association has mailed the long-form disclosures to the customer;

(b) if the contract is solicited through written materials such as mail inserts or "take one" applications and a mutual association provides only the short-form disclosures in the written materials, then the mutual association shall mail the acknowledgment of receipt of disclosures, together with a long-form disclosure as provided under [New Rule XXXV(2)], to the customer within three business days, beginning on the first business day after the customer contacts the mutual association or otherwise responds to the solicitation. A mutual association may not obligate the customer to pay for the contract until after the mutual association has received the customer's written acknowledgment of receipt of disclosures unless the mutual association:

(i) maintains sufficient documentation to show that the mutual association provided the acknowledgment of receipt of disclosures to the customer;

(ii) maintains sufficient documentation to show that the mutual association made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long-form disclosures; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the mutual association has mailed the long-form disclosures to the customer.

(4) An applicant for approval of a merger transaction shall publish notice of the proposed transaction on at least three occasions at approximately equal intervals in a newspaper of general circulation in the community or communities where the main offices of the merging institutions are located; or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest to the community.

(a) The first publication of the notice must be as close as practicable to the date on which the application is filed with the department, but no more than five days before the filing date.

(b) The last publication of the notice must be on the 25th day after the first publication; or, if the newspaper does not publish on the 25th day, on the publication date closest to the 25th day.

(5) The text of the public notice must include the following information:

(a) that an application for merger has been made to the Montana Commissioner of Banking and Financial Institutions;

(b) the name and address of all the parties to the merger;

(c) the identity of the surviving institution;

(d) that the public may submit comments to the Commissioner, Montana Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546;

(e) the closing date of the public comment period; and

(f) that the nonconfidential portions of the application are on file with the department and are available for public inspection during regular business hours.

(6) The comment period must be 30 days.

(7) The notice may be combined with any notice of an applicable state or federal regulator and published jointly.

(8) Where public notice is required, the department may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements.

(9) The applicant(s) shall provide the affidavit(s) of publication to the department after it is received.

AUTH: 32-2-704, MCA
IMP: 32-2-827, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing to adopt this rule establishing merger application procedures that align with the federal rules promulgated by the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (FRB), and the Office of the Comptroller of the Currency (OCC). A merger application must be approved by the state regulator (the department) and at least one federal regulator. At times, several other state regulators, in addition to the department, are involved in merger approvals. Since the mutual associations must comply with all the regulations of all the regulators involved in the merger transaction, the department seeks to make its rules consistent with the federal rules in order to facilitate the merger, without compromising the needs of the state in obtaining the information it needs to understand and approve the merger.

The format of this new proposed rule is consistent with the format for bank mergers. A copy of the proposed merger application must be sent to the department to review the application for completeness and begin the approval process.

Montana law has always required notice of a proposed merger be published in the newspaper published where the offices of a bank is located and proposes that mutual associations follow suit. This language is identical to 12 CFR 303.65(a).

The department has chosen to adopt notice language that is generic so as to allow the applicant mutual associations involved in the merger to publish one notice and have it be acceptable to both the state and the federal regulators instead of having to publish two notices due to minor variations in wording between the required notices.

The length of the comment period is being specified in this notice.

The rule specifically states that any notice required under Montana law may be combined and published jointly with any notice required by an applicable state or federal regulator involved in the transaction. Both the FDIC and the FRB allow joint notices to be published. The department is seeking to make clear in this rulemaking that it too will allow joint publication of notices.

Section (8) is necessary because the department needs to have the same flexibility as the FDIC to review the publication requirements. In some instances, the merger must be accomplished on a quicker timeline than normal, and the department needs to create a publication timeline that is appropriate for the circumstances. This language is identical to 12 CFR 303.7 (f).

The affidavit of publication is required as part of the merger process because otherwise the applicant would have no way to prove the notice ran on the specific days required in the format required for notice. However, since it is an affidavit of publication, it cannot be made and sworn to until after the publication has been made. Thus, the affidavit is not available at the time the initial application is made. In (9), the department requires that the affidavit of publication be delivered to the department after it is received by the applicant.

NEW RULE XIII MUTUAL ASSOCIATIONS - DIRECT LEASING OF PERSONAL PROPERTY (1) Under authority granted by 32-2-824, MCA, the department permits state mutual associations to engage in the business of direct leasing of personal property under the following regulations:

(a) A mutual association may purchase personal property to be leased only after it has a valid and binding commitment from the prospective lessee to lease the specific property under terms acceptable to the mutual association.

(b) Lease agreements with any one lessee may not exceed 10% of the assets of the mutual association. If the lessee is also a borrower from the mutual association, this 10% must be reduced by the balance of loans to the lessee.

(c) Every lease agreement must provide for full payout to the mutual association of its full acquisition cost of the lease property during the initial term of the lease.

(d) Residual value of the property at the end of a lease agreement's original term may be considered by the mutual association to constitute partial recovery of its cost of acquisition if such residual value is not more than 25% of the cost of acquisition.

(e) No lease agreement shall extend for an initial period of more than ten years or the leased property's normal useful life, whichever is less, unless the mutual association receives from the department prior written approval of each lease agreement of longer term.

(f) Each lease agreement must include provisions whereby the lessee disclaims any liability of the mutual association for the condition of the leased

property or its quality; and whereby the lessee assumes full responsibility for protection and maintenance of the leased property.

(2) Any formerly leased personal property returned to the mutual association by default, completion of the lease, or otherwise, must be disposed of by the mutual association by sale or lease within one year after gaining legal possession.

AUTH: 32-2-824, MCA
IMP: 32-2-824, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to permit state mutual associations to engage in the direct leasing of personal property with a residual value at the end of a lease not to exceed 10% of the assets of the association. This limit applies to nationally chartered mutual associations pursuant to 12 U.S.C. 24. The rest of the rule is consistent with the rule for state-chartered banks.

NEW RULE XIV RETENTION OF MUTUAL ASSOCIATION RECORDS

(1) Records of customer accounts, as defined in (7), must be held in accordance with 32-2-950, MCA.

(2) The publication "Mutual Savings and Loan Association Record Retention Periods - Appendix A to [New Rule XIV]" (Appendix A) establishes the minimum period for retention of mutual association records other than those specified in 32-2-950, MCA. Appendix A is maintained by the department and may be updated not more than once a year. The July 9, 2021, edition of Appendix A is incorporated by reference as part of this rule. A copy of Appendix A can be obtained from the department's website at banking.mt.gov.

(3) When a mutual association reproduces records in any manner in the regular course of business as permitted by 32-2-951 through 32-2-953, MCA, the retention period of the reproduced records is the same as specified in Appendix A.

(4) Mutual associations shall comply with all applicable federal mutual association laws and regulations requiring specific retention periods for the records enumerated in those laws or regulations. If an applicable federal mutual association law or regulation concerning record retention conflicts with a retention period contained in 32-2-950, MCA, this rule, or Appendix A, a mutual association shall comply with whichever retention period is longer. Mutual associations shall comply with other applicable state laws governing retention of personnel records, corporation records, etc.

(5) If a mutual association does not maintain records set forth in Appendix A, but maintains similar records with equivalent information, the mutual association's similar records must be retained for the time set forth for records in Appendix A.

(6) Records not covered by this rule or 32-2-950, MCA, must be retained for a period of time determined appropriate by the mutual association's board of directors. Retention periods determined appropriate by the board must be maintained as a permanent part of the board's minutes.

(7) "Customer accounts," for record retention purposes under 32-2-950, MCA, and this rule, means customer deposit accounts including savings deposit accounts, checking accounts, demand deposit accounts, certificates of deposit,

safety deposit boxes, trust accounts, Negotiable Order of Withdrawal (NOW) accounts, and money market deposit accounts.

AUTH: 32-2-950, MCA
IMP: 32-2-704, 32-2-950, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-704, MCA, allows the department to adopt rules which establish standards for bookkeeping and accounting as well as to set forth how mutual associations maintain credit information, information in connection with assets, or information in connection with charged off items. In addition, 32-2-950, MCA, addresses record retention of customer accounts and allows the department to adopt rules for retention schedules of mutual association records other than those of customer accounts.

In (2), the department proposes to establish the time period in which Appendix A can be updated, allowing it to be amended as needed but not more than once a year. Retention schedules for banks and credit unions indicate that it is typically not necessary to update more than once in a given year.

Section (4) clarifies which record retention period governs in the event of a conflict between applicable state and federal laws and regulations regarding records retention requirements.

Section (7) clarifies that "customer accounts" means customer deposit accounts and provides examples. Furthermore, it also clarifies that the types of deposit accounts included in the definition of "customer accounts" do not have common or wholly consistent characteristics that would enable all of them to be classified collectively for any purpose other than records retention.

NEW RULE XV FORM TO REPORT DIRECTORS AND OFFICERS

(1) Mutual associations shall use the List of Officers and Directors form dated July 9, 2021, which is located on the department's website at banking.mt.gov to report the directors and officers elected at the annual meeting and the board meeting to the department. The form shall be submitted to the department within 30 days of the date of the last meeting at which an election of officers or directors was held.

AUTH: 32-2-701, 32-2-704, MCA
IMP: 32-2-701, 32-2-704, 32-2-820, 32-2-821, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-820, MCA, requires the board of directors to be elected at the annual meeting of the members. For the department to ensure that the residency and other requirements of 32-2-820, MCA, are met, mutual associations must report their directors to the department. Section 32-2-821, MCA, requires the board to elect the officers of a mutual association at one of its meetings. For the department to ensure that this has been properly done, mutual associations must report their officers to the department. The reports are combined into one form which is located on the department's website for ease of use. The report should be filed within 30 days after whichever meeting is later.

NEW RULE XVI DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Branch" means a banking house, other than the main banking house, maintained and operated by a mutual association doing business in the state and at which deposits are received, checks are paid, or money is lent. The term does not include a satellite terminal, as defined in 32-6-103, MCA, a loan production office, or the office of an affiliated depository institution acting as an agent under 12 U.S.C. 1828.

(2) "Consolidate" means a combination of two or more office locations within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Thus, for example, a consolidation of two branches on the same block following a merger would not constitute a branch closure. Mutual associations that are in doubt about whether a consolidation or a closure has occurred should consult the department. A consolidation is considered a relocation for purposes of [New Rules XXIII and XXVII].

(3) "Customer" means a person who opened an account at the branch location in question, is currently associated with that branch, or whose address is within the same municipal area as the branch, as the mutual association determines is appropriate.

(4) "Loan production office" means a staffed facility, other than a branch, that provides lending-related services to the public, including loan information and applications.

(5) "Principal city" means an area designated as a "principal city" by the federal Office of Management and Budget.

(6) "Relocate" means a movement within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Generally, relocations involve movement over a short distance.

(7) "Short distance" means:

(a) within a 1,000-foot radius of the current location of the branch if it is located within the principal city of a metropolitan statistical area (MSA);

(b) within a one-mile radius of the current location of the branch if the branch is not located within a principal city, but is within an MSA; or

(c) within a two-mile radius of the branch if it is not located in an MSA.

AUTH: 32-2-701, 32-2-704, 32-2-828, 32-2-830, MCA
IMP: 32-2-701, 32-2-704, 32-2-828, 32-2-830, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule defines "branch" and "loan production office" in the same manner as for banks.

A loan production office or a branch that is being consolidated with another location or relocated to a nearby area should not have to go through the process of closing one location and opening another one. The concepts of consolidation and relocation have been developed by the federal banking agencies to allow an institution to either combine locations that are close to one another or move a location a relatively short distance.

Consistent with FDIC regulations, these definitions have been developed to allow flexibility, while recognizing that the essence of the definition is whether the location serves the same immediate neighborhood. In Froid, a move of 1500 feet may not be a relocation, whereas in Billings it may be, depending on whether the location continues to serve the same immediate neighborhood after the move.

The definition of "customer" is needed to allow institutions to determine who should receive notices of closures or relocations.

NEW RULE XVII APPLICATION PROCEDURE FOR APPROVAL TO ESTABLISH A NEW BRANCH (1) An existing state-chartered mutual association that does not meet the criteria in shall file with the department an application for approval to establish and operate a new branch.

(2) Applications shall be submitted to the department using the Uniform Interstate Application/Notice form dated July 9, 2021, which can be found on the department's website at banking.mt.gov. Electronic submission of applications to banking@mt.gov is preferred.

(3) The applicant shall publish its notice of intent to establish a new branch using the following procedure:

(a) if the application for a new branch also requires the approval of either the federal reserve system or the federal deposit insurance corporation, the notice shall be published at the times and in the format required by the federal agency, except that the notice shall include the following information which may be rephrased as needed: "Comments regarding this application should be forwarded in writing via email to banking@mt.gov. Comments will also be accepted by mail addressed to the Commissioner of Banking and Financial Institutions, Department of Administration, P.O. Box 200546, Helena, MT 59620-0546. The application may be reviewed, during the comment period, at the above address by calling the commissioner's office at (406) 841-2920 and requesting an appointment";

(b) if the applicant does not fall under the regulatory jurisdiction of either the federal reserve system or the federal deposit insurance corporation, or if the publication requirement of the federal regulator has been eliminated, the notice shall be published, following a format obtained from the department, in a newspaper of general circulation in the community or communities where the main office of the mutual association and proposed branch are located. If there is no such newspaper in the community, then the notice shall be published in the nearest newspaper of general circulation. Publication shall be made at least once a week on the same day for two consecutive weeks.

(4) All written comments concerning the application must be received by the department no later than 15 calendar days following the date of the last publication of the notice of intent. Comments received more than 15 calendar days after the date of the last publication will not be considered in the decision to approve or deny the application.

(5) The application shall be emailed or delivered to the department not more than ten days subsequent to the first publication of notice.

AUTH: 32-2-704, 32-2-828, MCA
IMP: 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: SB 308 allows the department to adopt rules to define the application procedures for new branch applications.

Section (1) is proposed to make clear that mutual associations that do not qualify for summary notice, must submit an application to the department.

Section (2) is included to adopt the Uniform Interstate Application/Notice form and to make clear that email is the preferred method of delivery of applications.

Montana law has historically required banks (not eligible for summary notice) to publish notice of a proposed new branch in the newspaper where the main branch and proposed new branch are located. The department proposes to apply the same requirement to mutual associations as well. The language of the notice is intentionally generic so as to allow the applicant to publish one notice and have it be acceptable to both the state and the federal regulators instead of having to publish two notices due to minor variations in wording between the required notices. Additionally, (3)(a) also allows the published statement to be rephrased as necessary for readability provided that the substance of the notice remains intact.

Section (4) defines the comment period, which is comparable to the period for banks, and in the past experience of the department, allows sufficient time for public comment.

Section (5) requires mutual associations to submit the application via regular mail or email not more than ten days subsequent to the first publication of notice. Ten days was chosen because the department needs to be apprised of the application and the need to be prepared to produce the non-confidential portions of the application to the public if requested.

NEW RULE XVIII REVIEW PROCEDURE FOR APPLICATIONS FOR APPROVAL TO ESTABLISH A NEW BRANCH (1) The department shall process applications for new branches in the order in which they are received. If an application is incomplete, the department shall notify the applicant by e-mail. An application will not be considered to have been received until it is in a complete form. An application is complete when all information required by the application form has been submitted and received. The department may request additional information from an applicant even if the application is considered complete.

(2) Factors that will be considered when determining whether to approve an application to establish a new branch include, but are not limited to, the following:

(a) the financial history and condition of the applicant;

(b) the capital levels and capital structure of the applicant;

(c) the quality, financial and banking experience, and depth of management of the applicant and the proposed branch;

(d) the convenience and needs of the community to be served at the proposed location of the new branch as evidenced by a brief statement provided by the applicant;

(e) earnings prospects of the applicant after establishing the new branch; and

(f) any other factors the department considers that could adversely affect the safety and soundness of the applicant or the viability of the new branch.

(3) The department shall issue its order approving or denying the application within 45 days after:

(a) the date of the last publication of the notice of intent to establish a new branch; or

(b) the date on which a complete application is received, whichever is later;

(4) The 45-day deadline may be extended by the department when review of the complete application raises questions or concerns that require additional information from the applicant or any other entity or person. Once the additional information is received by the department, the 45-day deadline may be extended by no further than 14 calendar days.

(5) When the department approves an application to establish a new branch, it will provide written notification to the applicant and the appropriate federal regulatory agency(s). The notification will include any conditions subject to the approval. Summary notification of the decision will be mailed to all persons or entities that have submitted written comment to the application.

(6) When the department denies an application to establish a new branch, it will provide written notification to the applicant, the appropriate federal regulator(s), and all persons or entities that have submitted written comment to the application. The written notification to the applicant will include the reasons for the denial.

(7) If an administrative hearing is requested under MAPA on the denial of an application, the time for the filing of a request for a hearing must occur within 14 calendar days following the department's decision.

AUTH: 32-2-704, 32-2-828, MCA
IMP: 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule identifies the process the department uses to process branch applications. The department determined it is appropriate to use a process similar to the bank branch application process to promote efficiency in operations. Section (1) states that applications will be processed in the order they are received and provides information on how the applicant will be contacted in the event of an incomplete application or if the department requires additional information.

Section (2) identifies the factors the department will consider when determining if a branch application should be approved. These factors have been useful when evaluating bank branch applications

Section (3) sets the timeframe in which the department will provide an approval or denial of the application.

Section (4) allows for an extension to submit additional information requested by the department and a deadline for the department to approve or deny the application after receiving that information. Based on its experience with banks, the department believes these timeframes are appropriate for mutual associations as well.

Section (5) requires the department to forward its approval of the new branch to the applicant, appropriate federal regulators, and any persons or entities that provided comment regarding the application to ensure all interested parties continue to be informed about the application status.

Likewise, (6) requires the department to forward its denial of the new branch to the applicant, appropriate federal regulators, and any persons or entities that provided comment regarding the application to ensure all interested parties are aware of the outcome.

Section (7) makes clear that an applicant for a branch license who is denied a license may request an administrative hearing under MAPA if they make the request within 14 days after the denial. This is consistent with the time allowed to request hearings when other financial institution applications are denied and provides the applicant sufficient time to advise the department of the applicant's intent to contest the agency decision.

NEW RULE XIX PROCEDURE FOLLOWING APPROVAL OF AN APPLICATION TO ESTABLISH A NEW BRANCH (1) A mutual association must open an approved branch within 18 months of the date of branch approval. Upon written request by the applicant and a finding of good cause by the department, the 18-month period may be extended by the department for a maximum of an additional six months.

(2) During the formation and establishment of the new branch, the applicant must inform the department of significant changes affecting any of the commitments, representations, or projections contained in the original application. Significant changes include, but are not limited to, the location of the new branch, the services to be offered by the new branch, and the staffing or management of the new branch. Significant changes may be sufficient to void the department's approval.

AUTH: 32-2-704, 32-2-828, MCA
IMP: 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to require that a mutual association must open an approved branch within 18 months of the department's approval. If the branch is unable to open, the mutual association may request a six-month extension. Since the conditions of a mutual association can change over time, if the branch is still unable to open, the mutual association must submit a new branch application.

In addition, (2) requires a mutual association to provide the department with any significant changes in information from the initial branch application which may or may not void the department's approval.

NEW RULE XX BRANCHES (1) A mutual association organized under the laws of this state that is a qualifying institution, as set forth in (2), may establish a branch in Montana upon summary notice and approval by the department. The notice shall be given using the Request for Summary Approval of Branch form dated July 9, 2021, which is located on the department's website at banking.mt.gov.

(2) In order to qualify for summary notice, the mutual association shall:

(a) have received its mutual association charter at least five years prior to making the request;

(b) be well-capitalized as defined in 12 CFR Part 324 by the Federal Deposit Insurance Corporation, if the mutual association is a nonmember mutual association;

or as defined in 12 CFR 208.43(b)(1) by the Federal Reserve Board of Governors, if the mutual association is a member mutual association of the Federal Reserve System;

(c) have received a CAMELS composite rating of one or two on its most recent state or federal safety and soundness examination;

(d) have received a management rating of one or two on its most recent state or federal regulatory examination; and

(e) not be a party to any formal or informal enforcement action initiated by a state or federal regulatory agency.

(3) The mutual association shall certify that it is a qualifying institution as of the date of the request.

(4) A mutual association that is not a qualifying institution as of the date of the request shall comply with [New Rules XVII and XIX].

(5) The department shall approve or deny a summary notice and application within 15 business days of receipt of a complete notice and application.

AUTH: 32-2-701, 32-2-704, 32-2-828, MCA
IMP: 32-2-701, 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: In this rule, the department allows institutions that do not present regulatory concerns a streamlined process to establish a branch. The criteria that an institution must meet to avail itself of the streamlined branching process are located in (2). Based on past experience with other financial institutions, the department determined a mutual association that qualifies for the summary notice procedures in (2) is in sufficient condition to not present regulatory concerns regarding branching. The notice gives the department the information it needs to process the request to branch. Upon receipt of the notice, the department can determine if a mutual association should be allowed to branch as requested.

However, the department maintains its ability to supervise institutions that may seek to branch while there are supervisory concerns at the institution. In those instances, the institution must comply with the full application, notice, and comment requirements of the current rules.

Given the streamlined approval process described in this rule for qualifying institutions, it is appropriate for the department to approve or deny a summary notice and application within 15 business days of receipt of a complete notice and application.

NEW RULE XXI MONTANA MUTUAL ASSOCIATIONS BRANCHING OUTSIDE MONTANA (1) In order for a mutual association organized under the laws of this state to request approval for a branch outside of Montana, the mutual association must submit copies of all required regulatory filings or notices required by the host state and federal agencies and comply with [New Rule XX] and the branching requirements of the state into which it seeks to branch.

AUTH: 32-2-701, 32-2-704, 32-2-828, MCA
IMP: 32-2-701, 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: A mutual association organized in this state that seeks to branch into another state must comply with the branching laws and regulations of both Montana and the state into which it seeks to branch. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 authorized financial institutions to open an initial branch in a host state by establishing a de novo branch at any location at which a financial institution chartered by the host state could establish a branch, and upon approval of the home state and appropriate federal regulator. New Rule XX sets forth the department's process to allow mutual associations organized in Montana to branch into another state.

NEW RULE XXII MUTUAL ASSOCIATIONS ORGANIZED OUTSIDE OF MONTANA BRANCHING INTO MONTANA (1) Mutual associations organized under the laws of a state other than Montana or of a national mutual association must submit copies of all required regulatory filings or notices required by the home state and federal agencies and comply with [New Rule XX] in order to branch into Montana.

AUTH: 32-2-701, 32-2-704, 32-2-828, MCA
IMP: 32-2-701, 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: Pursuant to 32-2-828, MCA, a mutual association organized under the laws of a state other than Montana that seeks to branch into Montana must comply with the branching laws and rules of Montana and get the approval of its organizing state and the appropriate federal regulator. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 authorized financial institutions to open an initial branch in a host state by establishing a de novo branch at any location at which a financial institution chartered by the host state could establish a branch. New Rule XX sets forth the process by which that can occur.

NEW RULE XXIII CLOSURE OR RELOCATION OF A BRANCH (1) A Montana state-chartered mutual association that desires to relocate or close a branch temporarily or permanently shall give notice to its customers using the customer Notice of Relocation of Mutual Association Branch form (relocation form) dated July 9, 2021, or customer Notice of Closure of Mutual Association Branch form (closure form) dated July 9, 2021. The forms are located on the department's website at banking.mt.gov. A mutual association may amend the form as needed or include additional information in the form as appropriate.

(2) The relocation or closure form shall be provided to customers of the branch by posting it at the branch at least 30 days before the relocation or closure of the branch. The relocation or closure form shall be provided to the department at the same time. The mutual association shall also notify its customers at least 30 days before the relocation or closure, by any effective method.

(3) The department reserves the right to request additional information regarding closure or relocation of a branch.

AUTH: 32-2-701, 32-2-704, 32-2-828, MCA
IMP: 32-2-701, 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-828, MCA, requires that a mutual association notify its customers and the department of any closure or relocation of a branch. This rule provides the process for that notification as well as the form to be used to provide the notice to mutual association customers and the department. The form is located on the department website for ease of use.

NEW RULE XXIV TEMPORARY EMERGENCY CLOSURE OF BRANCH (1) A mutual association that closes a branch under the authority of 32-2-1032(1), MCA, for 48 hours or less shall notify the department using the Temporary Emergency Branch Closure form dated July 9, 2021, located on the department's website at banking.mt.gov.

AUTH: 32-2-701, 32-2-704, MCA
IMP: 32-2-701, 32-2-704, 32-2-1030, 32-2-1031, 32-2-1032, 32-2-1033, 32-2-1034, MCA

STATEMENT OF REASONABLE NECESSITY: Mutual associations may have to close branches for a short period of time due to an emergency. Some examples of this are: weather events that make travel so hazardous employees and customers cannot access the branch for a short time, flooding which can be remediated in 48 hours or less, or circumstances that preclude safe travel. Under these conditions, 32-2-1032, MCA, allows the officers of the mutual association the authority to close a branch for up to 48 consecutive hours, without requesting the approval of department. However, the mutual association must provide notice of the closure to the department as promptly as possible. The temporary emergency closure form facilitates notification. It is provided on the department's website to allow mutual associations to quickly access and submit the form.

NEW RULE XXV EMERGENCY CLOSURE OF BRANCH (1) A mutual association that closes a branch under the authority of 32-2-1032, MCA, for more than 48 hours shall notify the department using the Emergency Branch Closure form dated July 9, 2021, located on the department's website at banking.mt.gov.

AUTH: 32-2-701, 32-2-704, MCA
IMP: 32-2-701, 32-2-704, 32-2-1030, 32-2-1031, 32-2-1032, 32-2-1033, 32-2-1034, MCA

STATEMENT OF REASONABLE NECESSITY: A mutual association branch that closes for more than 48 consecutive hours on an emergency basis as set forth in 32-2-1032, MCA, must notify the department of the closure and request approval to stay closed for longer than 48 consecutive hours. Examples of such events include flooding that damages all the wiring and computers of the branch so badly it had to be closed for a complete remodel, fires, earthquakes, and other casualty

events that severely damage the branch. The department created a form to allow the mutual association to notify the department of the circumstances of the closure and to request approval to stay closed until the emergency abates. The form is located on the department's website to allow mutual associations to quickly access and submit the form.

NEW RULE XXVI LOAN PRODUCTION OFFICE ACTIVITIES (1) A loan production office may conduct any of the following activities, which shall not, individually or collectively, cause the loan production office to be considered a branch:

(a) solicit loans on behalf of the mutual association or a branch of the mutual association;

(b) assemble credit information;

(c) make property inspections and appraisals;

(d) secure title information;

(e) prepare applications for loans, including making recommendations with respect to action; and

(f) solicit investors to purchase loans from the mutual association and to contract with the mutual association for servicing of such loans.

(2) A mutual association shall not accept deposits or loan payments, originate deposits or savings or checking accounts, approve loans, or disburse loan funds at a loan production office established pursuant to this rule.

AUTH: 32-2-701, 32-2-704, 32-2-830, MCA
IMP: 32-2-701, 32-2-704, 32-2-830, MCA

STATEMENT OF REASONABLE NECESSITY: SB 308 set the requirements for mutual association branch and loan production office openings, relocations, and closures. This rule is necessary to provide guidance to institutions as to activities a loan production office can engage in, and what activities will cause the loan production office to be considered a branch, which will require licensure as a branch.

NEW RULE XXVII LOAN PRODUCTION OFFICE (1) A mutual association that desires to establish a loan production office in this state shall provide written notice to the department of its intent to do so at least 30 days prior to opening the loan production office using the Notice of Intent to Establish a Loan Production Office form dated July 9, 2021, located on the department's website at banking.mt.gov.

(2) A mutual association organized under the laws of Montana that intends to open a loan production office in another state shall submit copies of all required regulatory filings or notices required by the host state and federal agencies along with the items required in the Notice of Intent to Establish a Loan Production Office form, if they are not already included in the form, to the department.

(3) A Montana state-chartered mutual association that desires to relocate or close a loan production office temporarily or permanently shall give notice to its customers using the customer Notice of Relocation form (relocation form) dated July

9, 2021, or customer Notice of Closure form (closure form) dated July 9, 2021, located on the department's website at banking.mt.gov.

(4) The relocation or closure form shall be provided to customers of the loan production office by posting it at the loan production office at least fifteen days before the relocation or closure of the office. The relocation or closure form shall be provided to the department at the same time.

(5) The department reserves the right to request additional information regarding the opening, closure, or relocation of a loan production office.

(6) If the loan production office will be using an assumed name, compliance with 32-2-902, MCA, is required.

(7) Each loan production office shall be subject to examination and supervision by the department in the same manner and to the same extent as the mutual association.

AUTH: 32-2-701, 32-2-830, MCA
IMP: 32-2-701, 32-2-830, 32-2-1030, 32-2-1031, 32-2-1032, 32-2-1033, 32-2-1034, MCA

STATEMENT OF REASONABLE NECESSITY: SB 308 allows the department to require notice of the establishment, relocation, and closure of loan production offices. The department proposes this rule to implement these requirements. The notices will be available on the department's website to allow mutual associations immediate access to the forms and the procedures involving loan production offices. The Notice of Intent to Establish a Loan Production Office form will be used to obtain the information necessary for the department to determine which mutual association is opening a loan production office, where the office will be located, who will be running the office, when it will open, and what activities will be conducted there. This is the rudimentary information needed by the department to monitor banking activities in this state.

The rule also provides for online forms for the relocation of a loan production office and temporary or permanent closure of a loan production office. This allows mutual associations to use standardized forms and processes which are immediately available online to notify customers, and the department, of closures or relocations of loan production offices. One purpose of the notice is to inform customers when a loan production office is being relocated. The notice may also be used if the loan production office is being closed temporarily or permanently to notify customers of the date of closure and reason for the closure.

The rule also addresses permanent or temporary non-emergency closures for loan production offices. Emergency closures are governed by 32-2-1030 through 32-2-1034, MCA.

The rule allows the department to request additional information as needed regarding the opening, closure, or relocation of loan production offices.

The rule makes clear that if an assumed name is used for the loan production office, 32-2-902, MCA, applies.

The rule provides that loan production offices are subject to examination by the department in the same manner and to the same extent as the mutual association. This proposal ensures consistency in examinations and removes any

suggestion that a loan production office is somehow disassociated from the mutual association that operates it.

NEW RULE XXVIII DEFINITIONS (1) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge. Under this method, a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) "Contract" means a debt cancellation contract or a debt suspension agreement.

(3) "Customer" means an individual who obtains from a mutual association an extension of credit that is primarily for personal, family, or household purposes. For purposes of this subchapter, the term means the same thing as "borrower."

(4) "Debt cancellation contract" means a loan term or contractual arrangement modifying loan terms under which a mutual association agrees, for a fee, to suspend all or part of a customer's obligation to repay an extension of credit from that mutual association upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The extension of credit to which it pertains may be a direct loan made by the mutual association or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the mutual association. In the case of an indirect loan in the form of a retail installment sales contract, the debt cancellation contract may be offered by the mutual association through a nonexclusive, unaffiliated agent contingent upon the mutual association purchasing or taking assignment of the indirect loan. The agreement may be separate from or a part of other loan documents. A debt cancellation contract may be offered and purchased either contemporaneously with the other terms of the loan agreement or subsequently.

(5) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a mutual association agrees, for a fee, to suspend all or part of a customer's obligation to repay an extension of credit from that mutual association upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The extension of credit may be a direct loan made by the mutual association or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the mutual association. In the case of an indirect loan in the form of a retail installment sales contract, the debt suspension agreement may be offered by the mutual association through a nonexclusive, unaffiliated agent contingent upon the mutual association purchasing or taking assignment of the indirect loan. The agreement may be separate from or a part of other loan documents. The term "debt suspension agreement" does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the mutual association's unilateral decision to allow a deferral of repayment.

(6) "Guaranteed asset protection (GAP) waiver or agreement" means a term of an extension of credit or contractual arrangement modifying terms of an extension of credit for the purchase of titled personal property under which a mutual association agrees to cancel the customer's obligation to repay the portion of the extension of credit that exceeds the amount paid by the primary insurer of the titled

personal property upon the insurer's declaration that the titled personal property is a total loss or determination that the titled personal property is stolen and not recoverable.

(7) "Loan or extension of credit" means a direct or indirect advance of funds to a customer made on the basis of any obligation of that customer to repay the funds or that is repayable from specific property pledged by or on the customer's behalf. The term also includes any liability of a mutual association to advance funds to or on behalf of a customer pursuant to a contractual commitment.

(8) "Residential mortgage loan" means a loan for personal, family, or household purposes secured by a one- to four-family residential property.

AUTH: 32-2-704, MCA
IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: Definitions of the terms in (1), (2), (3), (4), (5), and (8) are substantially equivalent to the definitions of the same terms in 12 CFR 37.2. The department has determined that the federal definitions will be sufficient to serve the department's purposes and meet the Legislature's intent. Because these definitions already exist, the department saw no need to write its own original definitions.

The definition of "guaranteed asset protection (GAP) waiver or agreement" in (6) is substantially equivalent to and adapted from Office of the Comptroller of the Currency (OCC) Interpretive Letters #1028 and #1032 concerning GAP waivers or agreements as they relate to debt cancellation contracts. The department believes the OCC's description of GAP waivers or agreements in the interpretive letters is clear and that the definition adapted from the letters is sufficient to serve the department's purposes and meet the Legislature's intent.

The definition of "loan or extension of credit" in (7) is substantially equivalent to and adapted from 12 USC 84(b)(1). The definition was selected because it encompasses both advanced funds and commitments to advance funds such as letters of credit. The department chose to define "loan" or "extension of credit" for clarification purposes because the term is used throughout 12 CFR Part 37 upon which these rules are patterned, but the term is not defined in that part.

NEW RULE XXIX DEBT CANCELLATION AND DEBT SUSPENSION PROGRAMS – REQUIREMENTS (1) A mutual association offering debt cancellation contracts and/or debt suspension agreements shall:

(a) manage the risks associated with debt cancellation contracts and debt suspension agreements in accordance with mutual association safety and soundness principles by establishing and maintaining effective risk management and control processes over its debt cancellation contracts and debt suspension agreements to include:

(i) appropriate recognition and financial reporting of income, expenses, assets, and liabilities;

(ii) appropriate treatment of all expected and unexpected losses associated with the contracts; and

(iii) assessment of the adequacy of its internal control and risk mitigation activities in view of the nature and scope of the mutual association's debt cancellation and debt suspension program; and

(b) obtain and maintain in effect insurance from an insurer authorized or otherwise registered with the State Auditor and Commissioner of Insurance (State Auditor) to do business in Montana. The insurance must cover 100% of the at-risk loan balances to which the mutual association's debt cancellation contracts pertain.

AUTH: 32-2-704, MCA
IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: Subsection (1)(a) is substantially equivalent to 12 CFR 37.8. The department has determined that the federal regulation, together with (1)(b), will be sufficient to serve the department's purposes and meet the Legislature's intent.

Subsection (1)(b) adds a requirement that has no counterpart or equivalent in the federal regulations making this rule more stringent than 12 CFR 37.8. National mutual associations are permitted but not required to manage the risk associated with their debt cancellation contracts and debt suspension agreements by obtaining insurance coverage. The department believes the best practice, consistent with mutual association safety and soundness principles, is to require insurance coverage. The potential losses that a mutual association is exposed to when it offers debt cancellation contracts and debt suspension agreements could be significant. Ideally, a mutual association could maintain a robust and effective internal program of monitoring and managing the risk without insurance, but that ideal may not always be met. A mutual association may not fully appreciate the extent of its risk exposure at all times if, for example, it does not retain an actuarial consultant. The department believes this reality poses an unacceptable risk to the mutual association's safety and soundness.

Vendors offer services to mutual associations related to administration of the mutual associations' debt cancellation and debt suspension programs. The department does not believe that requiring a mutual association to obtain insurance coverage for its risks associated with offering debt cancellation contracts, for example, changes the essential character of the two-party debt cancellation contract or converts it to an insurance product.

Under SB 308, debt cancellation contracts and debt suspension agreements between customers and mutual associations under which there is no obligation on the part of a third-party insurer to pay the customer's loan balance or make loan payments on behalf of the customer upon the occurrence of the identified event are not insurance. By contrast, under an insurance contract between a mutual association and an insurer covering the mutual association's risks associated with offering debt cancellation contracts, for example, the insurer is obligated to pay the mutual association for the loss it sustains when a debt cancellation contract is activated by the occurrence of the identified event. Clearly, the latter transaction is an insurance transaction that is subject to the provisions of Title 33, MCA.

NEW RULE XXX REQUIRED DISCLOSURES (1) A mutual association shall provide the following disclosures to the mutual association's customer:

(a) notice of the prohibited acts or practices contained in [New Rule XXXI];

(b) the fee applicable to the contract and any payment options;

(c) the refund policy;

(d) whether the customer is barred from using the credit line to which it pertains if the debt cancellation contract or debt suspension agreement is activated;

(e) eligibility requirements, conditions, and exclusions;

(f) that a debt suspension agreement, if activated, does not cancel the debt, but only suspends payment requirements; and

(g) notice that cancellation of debt may result in a tax liability to the customer if activated.

(2) The requirements for the timing and method of disclosure are:

(a) the mutual association shall make the disclosures in (1) and the short-form disclosures under [New Rule XXXV] orally at the time the mutual association first solicits the purchase of a contract;

(b) the mutual association shall make the long-form disclosures under [New Rule XXXV] in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, the mutual association shall provide the long-form disclosure in writing at that time;

(c) if the contract is solicited by telephone, the mutual association shall provide the disclosures in (1) and the short-form disclosures under [New Rule XXXV] orally and shall mail the long-form disclosures, and, if appropriate, a copy of the contract to the customer within three business days beginning on the first business day after the telephone solicitation; and

(d) if the contract is solicited through written materials such as mail inserts or "take one" applications, the mutual association may provide only the disclosures in (1) and the short-form disclosure under [New Rule XXXV] to the customer within three business days beginning on the first business day after the customer contacts the mutual association in response to the solicitation, subject to the requirements of [New Rule XXXIV(3)(b)].

(3) The disclosures required by these rules must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. The methods may include use of plain language headings, easily readable typeface and size, wide margins and ample line spacing, boldface or italics for key words, and/or distinctive type style or graphic devices.

(4) The disclosures in the short-form disclosure under [New Rule XXXV] are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the mutual association.

(5) The disclosures described in these rules may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. or the Uniform Electronic Transactions Act, Title 30, chapter 18, part 1, MCA.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: Subsections (1)(b) through (1)(f) are substantially equivalent to 12 CFR 37.6. The department has determined that the federal regulation, when combined with (1)(a) and (1)(g) of this rule, provides sufficient information to enable a mutual association customer to make an informed decision concerning the purchase of a debt cancellation contract or debt suspension agreement.

Subsection (1)(a) requires a mutual association to give the customer notice of what acts or practices of a mutual association pertaining to debt cancellation contracts and debt suspension agreements are prohibited under New Rule XXXI. The department believes that customers with knowledge of the prohibited acts and practices can more effectively assert the protections that the law affords them. Subsection (1)(a) may also protect mutual associations from unfounded customer claims that the customer was unaware of relevant information or was misled.

Subsection (1)(g) has no equivalent or counterpart in the federal regulation pertaining to debt cancellation contracts and debt suspension agreements. While (1)(g) does not require a mutual association to give its customer tax advice on Internal Revenue Code §6050P or any other provisions of the tax code, it requires that the customer be given notice of the potential tax liability if a debt cancellation contract is activated. The requirement in (1)(g) makes this rule more stringent than 12 CFR 37.6. The department believes that it is important that the customer know of a potential tax liability.

NEW RULE XXXI PROHIBITED ACTS OR PRACTICES (1) A mutual association is prohibited from engaging in any of the following acts or practices:

(a) extending credit or altering the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation contract or debt suspension agreement with the mutual association. The prohibition is commonly referred to in the regulatory context as the anti-tying provision;

(b) engaging in any practice or using any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under [New Rule XXX], including what is being offered, the cost, and/or the terms of the contract;

(c) offering debt cancellation contracts or debt suspension agreements that contain terms:

(i) giving the mutual association the right unilaterally to modify the contract unless:

(A) the modification is favorable to the customer and is made without additional charge to the customer; or

(B) the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect; or

(ii) requiring an up-front, lump-sum single payment for the contract if the extension of credit to which the contract pertains is a residential mortgage loan.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.3. The department believes that the federal regulation will serve the department's purposes and meet the Legislature's intent. This rule adds examples of the areas in which a customer could be misled or come to an erroneous belief as a result of a mutual association's practices or advertising. The examples were cited in a case in which a federal regulator imposed large civil penalties against a national bank related to its marketing of credit protection products. The department believes that inclusion of specific examples in (1)(b) provides more clarity to the rule. Based on past experiences with other financial institutions' debt cancellation and suspension programs, the department has determined prohibiting the identified practices will protect consumers.

NEW RULE XXXII REFUNDS OF FEES UPON TERMINATION OR PREPAYMENT OF COVERED LOAN (1) If a debt cancellation contract or debt suspension agreement is terminated, including, for example, when the customer prepays the covered loan, a mutual association shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise.

(2) A mutual association may offer a customer a contract that does not provide for a refund only if the mutual association also offers that customer a bona fide option to purchase a comparable contract that provides for a refund.

(3) A mutual association shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

AUTH: 32-2-704, MCA
IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.4. The department believes that the federal regulation will be sufficient to serve the department's purposes, meet the Legislature's intent, and ensure fairness to a mutual association's customer by providing refund options as well as overall clarity to the refund issue.

NEW RULE XXXIII METHOD OF PAYMENT OF FEES (1) Except as provided in [New Rule XXXI(1)(c)(ii)], a mutual association may offer a customer the option of paying the fee for a debt cancellation contract or a debt suspension agreement in a single payment, provided the mutual association also offers the customer a bona fide option of paying the fee for that contract in periodic installment payments.

(2) If a mutual association offers the customer the option to finance the single payment by adding it to the loan principal, the mutual association must also disclose, in accordance with [New Rule XXXII], whether the customer may cancel the agreement and receive a refund, and, if so, the time period during which the customer may do so.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.5. The department believes that the federal regulation will be sufficient to serve the department's purposes, meet the Legislature's intent, and, together with New Rule XXXIII, provide overall clarity to the refund issue.

NEW RULE XXXIV AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES (1) Before entering into a debt cancellation contract or debt suspension agreement, a mutual association shall obtain the customer's written affirmative election to purchase the contract and a written acknowledgment of receipt of the disclosures required under [New Rule XXX].

(2) The election and acknowledgment information must be conspicuous, simple, direct, readily understandable, and designed to call attention to its significance.

(3) The election and acknowledgment information satisfies these standards if it conforms to the following requirements:

(a) if the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided that the mutual association:

(i) maintains sufficient documentation to show that the customer received the short-form disclosures substantially similar to [New Rule XXXV(1)] and then affirmatively elected to purchase the contract;

(ii) mails to the customer the affirmative written election and written acknowledgment together with a long-form disclosure substantially similar to [New Rule XXXV(2)], within three business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the mutual association has mailed the long-form disclosures to the customer;

(b) if the contract is solicited through written materials such as mail inserts or "take one" applications and a mutual association provides only the short-form disclosures in the written materials, then the mutual association shall mail the acknowledgment of receipt of disclosures, together with a long-form disclosure as provided under [New Rule XXXV(2)], to the customer within three business days, beginning on the first business day after the customer contacts the mutual association or otherwise responds to the solicitation. A mutual association may not obligate the customer to pay for the contract until after the mutual association has received the customer's written acknowledgment of receipt of disclosures unless the mutual association:

(i) maintains sufficient documentation to show that the mutual association provided the acknowledgment of receipt of disclosures to the customer;

(ii) maintains sufficient documentation to show that the mutual association made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long-form disclosures; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the mutual association has mailed the long-form disclosures to the customer.

(4) The affirmative election and acknowledgment may be made electronically in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. or the Uniform Electronic Transactions Act, Title 30, chapter 18, part 1, MCA.

AUTH: 32-2-704, MCA
IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.7. The department believes that the federal regulation is sufficient to serve the department's purposes, meet the Legislature's intent, and protect both the mutual association and its customer. Section (4) includes a citation to state law relating to electronic transactions that is not included in 12 CFR 37.7. The addition of the reference to state law will clarify for mutual associations that a customer's affirmative election and acknowledgment pertaining to the purchase of a debt cancellation or debt suspension contract may be in electronic form.

NEW RULE XXXV DISCLOSURE FORMS (1) The department adopts as a model, but not as a requirement, the Comptroller of the Currency's model short form disclosure at 12 CFR 37 Appendix A revised as of January 1, 2010. The form must be adapted by the mutual association to include the disclosures required under [New Rule XXX(1)(a) and (g)].

(2) The department adopts as a model, but not as a requirement, the Comptroller of the Currency's model long-form disclosure at 12 CFR 37 Appendix B revised as of January 1, 2010. The form must be adapted by the mutual association to include the disclosures required under [New Rule XXX(1)(a) and (g)].

(3) The model forms in (1) and (2), which are available at Title 12, Volume I, Part 37, Appendices A and B in the Code of Federal Regulations, are not mandatory, but a mutual association that provides disclosures in a form substantially similar to the adapted model forms will be deemed to have satisfied the disclosure requirements applicable to the mutual association concerning its debt cancellation and/or debt suspension program.

AUTH: 32-2-704, MCA
IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR Part 37, Appendices A and B, except this rule requires a mutual association to adapt the federal forms to include the requirements imposed by these rules that have no counterpart or equivalent in federal regulations so that the disclosures are consistent with these rules.

NEW RULE XXXVI GUARANTEED ASSET PROTECTION (GAP) FEATURE

(1) A GAP waiver or agreement is a type of debt cancellation contract. A debt cancellation contract with a GAP feature offered in connection with an extension of credit for the purchase of titled personal property for personal, family, or household use is a single product. A mutual association offering a debt cancellation contract with a GAP feature may do so through nonexclusive, unaffiliated agents such as automobile dealers. The fee arrangement between a mutual association and a nonexclusive, unaffiliated agent through which the debt cancellation product is offered does not create a separate contract that violates the anti-tying provision of [New Rule XXXI(1)(a)].

AUTH: 32-2-704, MCA
IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule pertaining to Guaranteed Asset Protection features of debt cancellation contracts derives from OCC Interpretative Letters #1028 and #1032 addressing whether GAP features are debt cancellation products, whether they run afoul of the anti-tying provision in New Rule XXXI(1)(a), and whether they may be offered through nonexclusive agents such as automobile dealers. Based on the numbers and types of inquiries from national banks to the OCC over the years about GAP features of debt cancellation contracts, the department believes that in the absence of this rule, there would likely be confusion about such matters among mutual associations. The department believes this rule is necessary to clarify that potential area of confusion.

NEW RULE XXXVII NONCONFORMING LOANS AND EXTENSIONS OF CREDIT (1) A loan or extension of credit within a mutual association's legal lending limit when made will not be deemed a violation but will be treated as nonconforming if the loan or extension of credit is no longer in conformity with the mutual association's lending limit because:

(a) the mutual association's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules changed;

(b) collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value; or

(c) in the case of a credit exposure arising from a derivative transaction or a securities financing transaction and measured by either the current exposure method or the Basel collateral haircut method specified in [New Rule LI] and Appendix B to [New Rule LI], the credit exposure subject to the lending limits of 32-2-925, MCA, or this rule increases after execution of the transaction.

(2) A mutual association shall use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of (1)(a) into conformity with the mutual association's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(3) A mutual association shall bring a loan or extension of credit that is nonconforming as a result of circumstances described in (1)(b) into conformity with the mutual association's lending limit within 30 calendar days, except when judicial

proceedings, regulatory actions, or other extraordinary circumstances beyond the mutual association's control prevent it from taking action.

AUTH: 32-2-925, MCA
IMP: 32-2-925, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to put mutual associations on notice of the level of regulatory response that can be expected concerning lending limit irregularities. The rule distinguishes between a loan or extension of credit that flatly violates a lending limit and a loan or extension of credit that, in the circumstances described in (1)(a) and (1)(b), warrants a designation of "nonconforming." The distinction could conceivably make a difference in a mutual association's CAMELS ratings in the appropriate circumstance. The dual corrective action requirements in (2) and (3) are intended to be proportionate to the seriousness of the circumstance that triggered the "nonconforming" designation. This rule introduces a circumstance that would warrant a "nonconforming" treatment when a lending limit irregularity arises from increases in a mutual association's credit exposure during the term of a derivative transaction or securities financing transaction so long as the credit exposure was properly measured using authorized methods and models in the first instance.

NEW RULE XXXVIII U.S. TREASURY AND U.S. GOVERNMENT AGENCY ISSUES (1) There is no dollar limit on a mutual association's investment in the following U.S. treasury securities:

(a) bonds;
(b) notes; or
(c) bills.

(2) There is no dollar limit on a mutual association's investment in U.S. treasury bonds and notes in the form of separate trading of registered interest and principal of securities (STRIPS).

(3) There is no dollar limit on a mutual association's investment in the following U.S. government agency ordinary debt issues:

(a) farm credit system (FCS):
(i) consolidated FCS bonds;
(ii) federal land bank bonds (FLB);
(iii) federal intermediate credit bank bonds (FICB);
(iv) banks for cooperatives bonds (BC); and
(v) federal agricultural mortgage corporation (FAMC);
(b) farmers home administration (FmHA);
(c) federal housing administration (FHA);
(d) federal home loan banks (FHLB);
(e) federal home loan mortgage corporation (FHLMC);
(f) federal national mortgage association (FNMA);
(g) student loan marketing association (SLMA); and
(h) United States postal service (USPS).

(4) There is no dollar limit on a mutual association's investment in the following U.S. government agency mortgage-backed securities (MBS), collateralized

mortgage obligations (CMOs), and real estate mortgage investment conduits (REMICs):

(a) instruments issued by the federal home loan mortgage association (FHLMC);

(b) instruments issued by the federal national mortgage association (FNMA);

(c) instruments issued by the government national mortgage association (GNMA);

(d) instruments issued by the federal agricultural mortgage corporation (FAMC);

(e) FHLMC MBS pass through securities (PCs);

(f) GNMA I, single issuer pass through PCs; and

(g) GNMA II, single and multiple issuer pass through PCs.

AUTH: 32-2-701, 32-2-704, 32-2-908, MCA
IMP: 32-2-701, 32-2-704, 32-2-908, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks, which is based on an identical statute. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XXXIX OTHER APPROVED QUASI-GOVERNMENT SECURITIES (1) Certain other securities are approved for mutual association investment. There is no dollar limit on a mutual association's investment in:

(a) general services administration (participation certificates);

(b) maritime administration (bonds and notes); and

(c) Washington metropolitan area transit authority (bonds).

(2) A mutual association's investment is limited to 50% of capital in:

(a) Asian development bank (bonds and notes);

(b) financing corporation (FICO) (bonds);

(c) Inter-American development bank (bonds);

(d) resolution funding corporation (REFCORP) (bonds);

(e) Tennessee valley authority (TVA) (bonds); and

(f) world bank (bonds and notes).

AUTH: 32-2-911, MCA
IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XL STATE, COUNTY, AND MUNICIPAL ISSUES (1) Mutual associations may invest, without dollar limitation, in the general obligation of any state which is part of the United States of America.

(a) The obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the state responsible for repayment of the general obligation.

(2) Mutual associations may invest, without dollar limitation, in the general obligations of any Montana political subdivision.

(a) The obligations must be issued pursuant to the Constitution or statutes of the state of Montana or the charter or ordinances of the respective county or city within the state of Montana.

(b) The obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the Montana political subdivision responsible for repayment of the general obligation.

(c) The issuing body must not have been in default with respect to the payment of principal or interest on any of its obligations within five years preceding the date of the investment.

(3) Mutual associations may invest up to 40% of their capital, per issuer, in the general obligations of any out-of-state political subdivision.

(a) The obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the out-of-state political subdivision responsible for repayment of the general obligation.

(b) The default requirements of (2)(c) must be met, and the obligations must have been rated in one of the four highest grades by a recognized national investment rating organization. Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the mutual association's investment policy.

(c) Mutual associations that have branches in other states, as that term is defined in [New Rule XVI], may also invest without limitation in general obligations of the political subdivisions of the states in which the offices are located.

(4) Mutual associations may invest, without limitation, in revenue bonds issued by the state of Montana or its political subdivisions.

(a) Mutual associations that have branches in other states may also invest without limitation in revenue bonds issued by those states or their political subdivisions.

(5) Mutual associations may invest up to 40% of their capital per issuer, in revenue bonds issued by any other state or its political subdivisions whereby the obligations are payable from pledged fee or tax revenue from designated sources.

(a) The default requirements of (2)(c) must be met, and the obligations must have been rated in one of the four highest grades by a recognized national investment rating organization. Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the mutual association's investment policy.

(6) Mutual associations may invest up to 20% of their capital per issuer, in industrial development revenue obligations issued by a political subdivision of the state of Montana, when repayment is dependent upon a nongovernmental obligor

and when such issues are in general accord with the commercial lending policy of the bank.

AUTH: 32-2-911, MCA
IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLI CORPORATE BONDS (1) Mutual associations may invest up to 20% of their capital, per issuer, in corporate bonds.

(2) These bonds must be investment grade, i.e., rated in one of the four highest grades by a recognized national investment rating organization. Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the mutual association's investment policy. Corporate bonds should be reviewed as necessary to assure the mutual association's board of directors that bond quality has not fallen below investment grade.

AUTH: 32-2-911, MCA
IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLII MUTUAL FUNDS (1) Under the authority of 32-2-908(1)(b), MCA, and subject to its restrictions, mutual associations may invest in mutual funds whose shares represent only those United States obligations listed in [New Rule XXXVIII].

(2) Members must have a proportionate undivided interest in any mutual fund utilized under this rule.

(3) Members must be shielded from personal liability for acts or obligations of the mutual fund.

(4) The mutual association's investment policy, as formally approved by its board of directors, must specifically provide for such investments. Prior approval of the board of directors must be obtained for initial investments in specific mutual funds and recorded in the official board minutes. Procedures, standards, and controls for managing such investments must be implemented prior to the investment being made.

AUTH: 32-2-911, MCA
IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLIII OTHER APPROVED INVESTMENTS (1) Certain other instruments which may have investment characteristics are approved for state-chartered mutual associations. They are the following:

(a) mutual associations may invest, on a per issuer basis, in certificates of deposit (CDs) or deposit notes from insured financial institutions up to the greater of 20% of their capital or the maximum amount of federal deposit insurance available for deposits. This limitation applies to the deposit and any accrued interest;

(b) mutual associations may invest up to 20% of their capital, per issuer, in commercial paper provided the commercial paper is rated A1 or P1, at the time of purchase, by a recognized national investment rating organization. Equivalent ratings from other established and generally recognized national rating organizations may be substituted;

(c) mutual associations may invest up to 20% of their capital, per issue, in privately issued CMOs and REMICs;

(d) privately issued CMOs and REMICs will not represent more than 40% of a mutual association's investment portfolio, or more than 400% of a mutual association's capital, whichever is the lesser; and

(e) mutual associations may invest up to 20% of their capital, per issuer, in trust preferred securities. These bonds must be investment grade, i.e., rated in one of the four highest grades by a recognized national investment rating organization. Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the mutual association's investment policy.

AUTH: 32-2-911, MCA
IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is similar to the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLIV DEBT SECURITIES FOR DEBTS PREVIOUSLY CONTRACTED (1) Debt securities received by a mutual association in good faith, in satisfaction of debts previously contracted, are not subject to the limitations of the applicable provisions of [New Rules XXXVIII through XLIII], if the book value of such obligations in excess of the limitations of the rule is reduced to the amount allowed within six months after the date the obligations are acquired.

AUTH: 32-2-911, MCA
IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLV DEFINITIONS For purposes of [New Rules XLVI through L], the following definitions apply:

(1) "Commitment to lend or extend credit" includes, but is not limited to:

(a) undisbursed portions of operating, construction, or other lines of credit, up to limits established by a written agreement between the lender and the borrower;

(b) undisbursed portions of credit lines established to cover overdrafts;

(c) undisbursed portions of credit card plans; and

(d) standby letters of credit.

(2) "Loan" or "extension of credit" includes, but is not limited to:

(a) direct loans, whether on the mutual association's books or charged off the mutual association's books, subject to the exclusions in [New Rule L];

(b) loans, extensions of credit, or participation in loans or extensions of credit sold with recourse to or guaranteed by the mutual association;

(c) letters of credit, other than standby letters of credit;

(d) overdrafts, excluding intra-day overdrafts for which the mutual association receives payment prior to its close of business; and

(e) any credit exposure of a mutual association to a counterparty arising from a derivative transaction or a securities financing transaction as defined in ARM 2.59.125.

(3) "Person" means an individual, a corporation, a government, governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, a limited liability company, two or more persons having a joint or common interest, or any other legal or commercial entity.

AUTH: 32-2-925, MCA
IMP: 32-2-925, 32-2-911, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The proposed legal lending limit rules, New Rules XLVI through L, are the same as for banks. The bank rules have proven effective and are well-understood in the financial services industry in Montana. The department strives to be consistent with bank rules where possible.

NEW RULE XLVI LEGAL LENDING LIMIT (1) If no direct benefit is received or no common enterprise exists, the combined loans or extensions of credit to a commonly owned or controlled group of borrowers shall not exceed three times the mutual association's lending limit.

AUTH: 32-2-925, MCA
IMP: 32-2-925, MCA

NEW RULE XLVII COMBINATIONS OR GUARANTEES (1) Loans or extensions of credit to a person will be combined with loans or extensions of credit to one or more other persons when:

(a) proceeds of a loan or extension of credit are to be used for the direct benefit of the other person; or

(b) a common enterprise is deemed to exist between the persons, to the extent that loan proceeds are used for the benefit of the common enterprise and repayment is dependent upon the common enterprise.

(2) A loan or extension of credit guaranteed by a person shall be aggregated with the person's other loans and extensions of credit only to the extent that the person receives direct benefit from the loan.

AUTH: 32-2-925, MCA
IMP: 32-2-925, MCA

NEW RULE XLVIII DIRECT BENEFIT (1) A direct benefit exists when the proceeds of a loan or extension of credit to a person are deemed to be used to the advantage of another person. The amount of the loan will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to the other person. If the proceeds are used to acquire property, goods, or services through a bona fide arm's length transaction, a direct benefit does not exist regarding the seller of the property, goods, or services. A bona fide arm's length transaction is an actual transaction, performed in good faith, between two or more parties, with each party acting in their own self-interest.

AUTH: 32-2-925, MCA
IMP: 32-2-925, MCA

NEW RULE XLIX COMMON ENTERPRISE (1) A common enterprise occurs when two or more persons combine to acquire, operate, or control a business enterprise or property interest.

(2) Credit to a common enterprise includes:

(a) loans or extensions of credit to two or more persons when the loans or extensions of credit are used for a common purpose; the expected source of repayment for each loan or extension of credit is the same for two or more of the persons, and those persons lack another source of income from which the loans or extensions of credit, together with the person's other liabilities, may be fully repaid; and

(b) loans or extensions of credit made to persons who are related directly or indirectly through common control, including where one person is directly or indirectly controlled by another person; and if substantial financial interdependence exists between or among the persons. Substantial financial interdependence is deemed to exist when 50% or more of one person's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other person.

AUTH: 32-2-925, MCA

IMP: 32-2-925, MCA

NEW RULE L EXCLUSIONS (1) The following items will be excluded when calculating the amount of a person's total loans and extensions of credit:

(a) loans or extensions of credit, and participation in loans and extensions of credit, that have been sold, if:

(i) the loan, extension of credit, or the portion of the loan or extension of credit sold as a participation is sold without recourse to the selling mutual association; or

(ii) the participation agreement provides for a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event;

(b) loans, or extensions of credit, including portions thereof, that have been charged off the books of the mutual association in whole or in part, provided that the amounts charged off are:

(i) unenforceable by reason of discharge in bankruptcy;

(ii) no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or no longer legally enforceable for other reasons, provided that the mutual association maintains sufficient records to demonstrate that the loan is unenforceable;

(iii) credit exposures arising from securities financing transactions in which the securities financed are Type I securities, as defined in 12 CFR 1.2(j);

(iv) intraday credit exposures arising from a derivative transaction; or

(v) all other loans or portions of loans specifically exempted by provisions of 32-1-432, MCA, or other applicable laws.

AUTH: 32-2-925, MCA
IMP: 32-2-925, MCA

NEW RULE LI CREDIT EXPOSURE ARISING FROM DERIVATIVES AND SECURITIES FINANCING TRANSACTIONS (1) For purposes of determining a mutual association's lending limit under 32-2-925, MCA, the mutual association's credit exposure arising from a derivatives transaction or a securities financing transaction entered by a mutual association must be calculated in accordance with the methods and models contained in Appendix B to [New Rule LI] dated July 14, 2021, which is adopted and incorporated by reference, and available on the department's website at banking.mt.gov.

AUTH: 32-2-911, 32-2-925, MCA
IMP: 32-2-911, 32-2-925, MCA

STATEMENT OF REASONABLE NECESSITY: The department deems it necessary and consistent with safety and soundness principles to establish permissible models or methods for measuring credit exposure arising from derivative transactions and securities financing transactions and require that the same model be used for all derivative transactions except as provided in (2)(D) of Appendix B. The department deems consistency in measuring credit exposure key to a mutual association's awareness of its aggregate exposure and to its effective management of the credit exposures. The models and methods give mutual associations the means of measuring credit exposure for purposes of lending limit determinations and benchmarks for comparing actual outcomes against model-based projected outcomes pertaining to derivative transactions and securities financing transactions.

Requiring use of the specific models and methods specified in Appendix B is necessary to enable the department to more easily review a mutual association's determination of its derivative transaction and securities financing transaction credit exposures and verify whether the mutual association is in compliance with lending limits. The department believes that required use of the Appendix B models and methods will provide a good foundation for responsible use of derivative and securities financing transactions.

4. The department proposes to repeal the following rules:

2.59.201 SAVINGS AND LOAN ASSOCIATIONS – REAL ESTATE

AUTH: 32-2-401, 32-2-403, MCA
IMP: 32-2-407, MCA

2.59.202 EXAMINATION AND SUPERVISORY FEE (ANNUAL)

AUTH: 32-2-110, MCA
IMP: 32-2-110, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2021 Montana Legislature enacted Chapter 431, Laws of 2021 (Senate Bill 308), repealing the Building and Loan Act, Title 32, chapter 2, parts 1 through 5, MCA. Senate Bill 308 eliminated the authority for the provisions governing the operation of a building and loan associations. The bill passed and the statutes supporting these rules were repealed on May 7, 2021. Therefore, these rules are no longer applicable and should be repealed.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kelly O'Sullivan, Legal Counsel, Department of Administration, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov. Comments must be received no later than 5:00 p.m., January 20, 2022.

6. Kelly O'Sullivan, Legal Counsel for the Department of Administration, Division of Banking and Financial Institutions, has been designated to preside over and conduct this hearing.

7. An electronic copy of this proposal notice is available through the department's website at https://doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on May 26, 2021.

10. The department has determined that under 2-4-111, MCA, the proposed adoption and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.112 pertaining to investment policies and the repeal of ARM 2.59.131, 2.59.133, and 2.59.137 pertaining to the report of declaration and payment of dividend – dividend approval request form, oaths of directors, and parity with national banks	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 11, 2022, the Department of Administration proposes to amend and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on January 4, 2022, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.112 ~~INVESTMENT POLICIES~~ UNDERWRITING OF SECURITIES

~~(1) The bank's board of directors shall adopt an investment policy adequate for its bank. The policy shall include, at a minimum, circumstances relevant to those securities and investments the bank customarily owns or trades.~~

~~(a) With an emphasis on quality, the policy should describe those securities preferred by the bank's board of directors, and how the securities will be managed to incur a minimum risk to the bank.~~

~~(b) The bank's board of directors should formally approve those securities dealers with whom the bank does business. The bank's management should be familiar with the dealer's financial condition, abilities, and reputation in relation to the bank's needs.~~

~~(c) The board of directors should conduct a periodic review of its bank's investment portfolio, to determine adherence to previously established investment goals and policies, and to value all of its bank's investments, including investments in mutual funds. The board of directors should closely observe its bank's activity in "repurchase agreements" and "reverse repurchase agreements" for any adverse effects upon the bank.~~

~~(d) Information should be available in the bank's own credit files, or otherwise be readily accessible to bank management and examiners in sufficient detail to support a judgment that each issue in the portfolio is suitable for investment purposes.~~

(2) remains the same but is renumbered (1).

AUTH: 32-1-424, 32-1-433, MCA
IMP: 32-1-424, 32-1-433, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule and repeal the following rules in an effort to cut the red tape and streamline regulation for its state-chartered banks as part of Governor Gianforte's Red Tape Relief Initiative.

Section (1) of this rule can be deleted since banks are expected to have adequate investment policies pursuant to Federal Financial Institutions Examination Council (FFIEC) policies. The FFIEC is made up of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration. The FFIEC has issued policy statements regarding sound practices for managing investment securities. This includes board and senior management oversight and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risks associated with investment activities. This comprehensive risk management process requires policies that are appropriate for the size and risk profile of the institution. The FFIEC's investment policies protect the same interests that were secured by (1), and therefore, (1) is no longer necessary.

With the removal of (1), the catchphrase should be amended to better reflect the subject matter of the remaining section.

4. The department proposes to repeal the following rules:

2.59.131 REPORT OF DECLARATION AND PAYMENT OF DIVIDEND – DIVIDEND APPROVAL REQUEST FORM

AUTH: 32-1-211, 32-1-218, MCA
IMP: 32-1-211, 32-1-232, 32-1-452, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The substance of ARM 2.59.131, 2.59.133, and 2.59.137 can be put forth as optional guidance only and will be available on the department's website at banking.mt.gov. Making these forms optional gives banks greater flexibility and eliminates red tape. Banks may continue to use these forms or provide the required content in the format they prefer.

2.59.133 OATHS OF DIRECTORS

AUTH: 32-1-211, 32-1-322, MCA
IMP: 32-1-211, 32-1-322, MCA

2.59.137 PARITY WITH NATIONAL BANKS

AUTH: 32-1-211, 32-1-362, MCA
IMP: 32-1-211, 32-1-362, MCA

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov. Comments must be received no later than 5:00 p.m., January 20, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., January 4, 2022.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3 persons based on the 38 existing state-chartered banks.

8. An electronic copy of this proposal notice is available through the department's website at https://doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the

office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. The department has determined that under 2-4-111, MCA, the proposed amendment and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.1304 and the adoption of New Rule I pertaining to definitions and the development process for the adaptive management program to implement narrative nutrient standards	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (WATER QUALITY)

TO: All Concerned Persons

1. On February 8, 2022, at 2:00 p.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

The department is committed to preventing the spread of COVID-19 and promoting the health and wellness of others. Members of the public may participate either in-person or virtually. For in-person meetings, while face masks are not required, meeting attendees are welcome to wear masks. If you are not feeling well, please do not attend the in-person meeting. Registration with Zoom may be made at the following link: Join Zoom Meeting

Join Zoom Meeting
https://mt-gov.zoom.us/j/82082577152?pwd=REVKNGhCSmxJTWdsV2d5YzB5VlJJdz09

Meeting ID: 820 8257 7152
Password: 850245

Dial by Telephone
+1 646 558 8656 or +1 406 444 9999
Meeting ID: 820 8257 7152
Password: 850245
Find your local number: https://mt-gov.zoom.us/u/kdEt3vBBuG

Join by SIP
82082577152@zoomcrc.com

Join by H.323 (Polycom)
162.255.37.11##82082577152

Please contact Loryn Johnson, paralegal, at the Department of Environmental Quality at (406) 444-1388 or Loryn.Johnson2@mt.gov should you encounter any difficulties.

2. The department will make reasonable accommodations for persons with

disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Loryn Johnson, paralegal, no later than 4:00 p.m. on February 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Loryn Johnson at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail Loryn.Johnson2@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) remains the same

(2) "Adaptive management plan" means a watershed-specific plan developed under the adaptive management program to achieve the narrative nutrient standards and address nutrients in a specific watershed. An adaptive management plan includes a watershed monitoring plan and, if required, an implementation plan.

(3) "Adaptive management program" means a watershed-scale program that protects water quality from the impacts of nutrient sources by:

(a) prioritizing phosphorus reduction, as appropriate, while accounting for site specific conditions;

(b) allowing for nutrient sources to be addressed incrementally over time by incorporating flexible decision-making which can be adjusted as management actions and other factors become better understood;

(c) reasonably balancing all factors impacting a waterbody while considering the relative cost of treatment options, their feasibility, and their expected water quality improvement;

(d) identifying specific nutrient reduction requirements; and

(e) setting as its goal the protection and achievement of beneficial uses of the waterbody.

(2) through (81) remain the same but are renumbered (4) through (83).

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: In 2021, the 67th Montana Legislature enacted Senate Bill 358 (codified at 75-5-321, MCA). Senate Bill 358 requires the department to adopt rules related to narrative nutrient standards in consultation with the nutrient work group, an advisory work group convened by the department. Nutrients, in this context, refer to total phosphorus and total nitrogen concentrations in state surface waters. The rules are required to provide for the development of the adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality. To implement Senate Bill 358, it is necessary to define what the adaptive management program encompasses. The department and the nutrient work group further identified the need to define an adaptive management

plan, which is a detailed plan developed for a specific watershed that implements the adaptive management program on a watershed-by-watershed basis.

4. The rule proposed to be adopted provides as follows:

NEW RULE I DEVELOPMENT OF AN ADAPTIVE MANAGEMENT PROGRAM IMPLEMENTING NARRATIVE NUTRIENT STANDARDS (1) The department will adopt rules, in consultation with the Nutrient Work Group, for:

(a) the development of the Adaptive Management Program under which point source dischargers whose discharges include total phosphorus and/or nitrogen may apply for Individual Montana Pollutant Discharge Elimination System Permits (MPDES).

(i) Applications for MPDES Permits from these point source dischargers must include an Adaptive Management Plan. The Adaptive Management Plan must include a Watershed Monitoring Plan and may include an Implementation Plan.

(ii) The Watershed Monitoring Plan must:

(A) quantify nutrient loading from both point and non-point sources within watersheds;

(B) evaluate impacts of nutrients on beneficial uses of surface water bodies by requiring monitoring of appropriate response variables and any associated impact thresholds; and

(C) consider impairment status when identifying monitoring objectives.

(iii) If an Implementation Plan is required, the Implementation Plan:

(A) must establish a process for identifying nutrient loading reductions and other actions needed to achieve the narrative nutrient standards and protect beneficial uses. This process will prioritize phosphorus, considering site specific conditions; and

(B) may include flexibility for point sources to identify a variety of specific actions to reduce nutrient loading within the watershed. These actions must be based on results from the Watershed Monitoring Plan or department assessments.

(b) the establishment of a process for incorporating the Watershed Monitoring Plan requirements and any Implementation Plan into MPDES permits;

(c) the establishment of a process for developing nutrient loading reductions and other actions that can be incorporated into MPDES permits as enforceable conditions; and

(d) the development of an Incentive Program to incentivize additional nutrient reductions and other actions using methods that improve water quality beyond minimum requirements.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-321, 75-5-401, MCA

REASON: As previously indicated, Senate Bill 358 requires the department to adopt rules related to narrative nutrient standards in consultation with the nutrient work group. Senate Bill 358 directs the department to adopt rules by March 1, 2022.

The department convened the nutrient work group in May of 2021, and held meetings approximately bimonthly through the end of October 2021, to develop a

comprehensive rule package related to narrative nutrient standards. Despite a concerted effort by the department and the nutrient work group to develop a comprehensive rule package, there remains a substantial amount of work needed for the department to fully address the concerns of multiple parties. Rather than immediately move forward with a comprehensive rule package, the department has opted to adopt New Rule I, which establishes the basic elements of an adaptive management program required under Senate Bill 358. Proposed New Rule I provides a framework for the department to follow as it continues to meet and consult with the nutrient work group and work toward completion of the comprehensive rule package, to be adopted later in 2022.

Finally, Senate Bill 358 directs the department to amend the administrative rules to delete references to Department Circular DEQ-12A, which sets numeric nutrient standards for TP and TN. Amendment of the administrative rules to delete references to DEQ-12A will be conducted concurrently with the adoption of the comprehensive rule package.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Loryn Johnson, paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to loryn.johnson2@mt.gov, no later than 5:00 p.m., February 8, 2022. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; solar and wind energy bonding, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Loryn Johnson, paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Loryn Johnson at Loryn.Johnson2@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. Kurt R. Moser, attorney for the department, or another department attorney, has been designated to preside over and conduct the hearing.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have

been fulfilled. The primary sponsor was notified on December 8, 2021, by regular mail.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendment and adoption of the above-stated rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: */s/ Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State December 14, 2021.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.210.401 fee schedule, 24.210.601 general license administration requirements, 24.210.604 supervising broker endorsement, 24.210.611 application for license–salesperson and broker, 24.210.801 fee schedule, 24.210.807 property management license transfer requirements, 24.210.828 unprofessional conduct for property management licensees, and the repeal of 24.210.610 predetermination for licensing	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 18, 2022, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/86468670445
Meeting ID: 864 6867 0445, Passcode: 348382
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 864 6867 0445, Passcode: 348382

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation no later than 5:00 p.m., on January 11, 2022, to advise us of the nature of the accommodation that you need. Please contact Dan Ritter, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrre@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.210.401 FEE SCHEDULE (1) through (3) remain the same.

(4) Original broker license	~~$175~~ 90
(5) Active renewal for broker license	~~175~~ 90
(6) Inactive renewal for broker license	~~87.50~~ 45
(7) Original salesperson license	~~150~~ 80
(8) Active renewal for salesperson license	~~150~~ 80
(9) Inactive renewal for salesperson license	~~75~~ 40

(10) through (13) remain the same.

(14) Activating a salesperson license on inactive status	~~75~~ 40
(15) Activating a broker license on inactive status	~~87.50~~ 45

(16) and (17) remain the same.

AUTH: 37-1-131, 37-1-134, 37-51-203, 37-51-207, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-301, 37-51-302, 37-51-303, ~~37-51-308,~~ 37-51-309, 37-51-311, MCA

REASON: The board determined it is reasonably necessary to amend this rule to comply with the provisions of 37-1-134, MCA, which requires the board to set fees that provide adequate funding for board operations. The board is also required to comply with 17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed twice the annual appropriation amount. The board is reducing renewal fees to gradually decrease the board's cash balance and meet the statutory requirements while ensuring adequate revenue to support board activities through the next biennium. The board estimates these fee reductions will affect 5,287 salesperson licensees and applicants and 2,501 broker licensees and applicants and will decrease revenue by approximately $524,433 annually.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) through (13) remain the same.

(14) A salesperson whose supervising broker has failed to renew or reinstate the broker's expired or suspended broker license or supervising broker endorsement must request to be placed on inactive status or transfer their salesperson license to another supervising broker within ten days of being notified by the board that their supervising ~~broker's broker license or supervising broker endorsement has expired~~ broker no longer has an active broker license or endorsement. A salesperson shall not conduct licensed activity during this unsupervised period.

(15) A supervising broker must immediately inform the broker's supervised salespeople that the supervising ~~broker's broker license or supervising broker endorsement has expired~~ broker no longer has an active broker license or endorsement.

(16) through (18) remain the same.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-301, ~~37-51-305, 37-51-308,~~ 37-51-309, 37-51-313, MCA

REASON: In response to a 2015 legislative audit recommendation, the board recently adopted two new rules to strengthen supervision requirements for supervising brokers (MAR Notice No. 24-210-47). After the proposal notice was filed, staff noticed potential ambiguity in this rule regarding suspended licensure of a supervising broker. The board determined it is reasonably necessary to amend this rule to clarify that inactive license status includes both expired and suspended licenses. These amendments are needed to be clear to both salespersons and brokers since salespersons cannot practice without having an active status supervising broker.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule and delete reference to a repealed statute.

24.210.604 SUPERVISING BROKER ENDORSEMENT (1) A supervising broker endorsement will be issued to any broker completing the supervising broker pre-endorsement course. The course will be part of the overall continuing education requirement.

(2) through (9) remain the same.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-319, 37-51-202, 37-51-204, 37-51-302, 37-51-303, MCA

REASON: The board is amending this rule to clarify that the supervising broker pre-endorsement course is acceptable toward required continuing education (CE). Board staff consistently receives questions about this course, and historically, the board has accepted the course when submitted during the CE audit process.

24.210.611 APPLICATION FOR LICENSE–SALESPERSON AND BROKER

(1) remains the same.

(2) No application for license will be accepted by the board until the individual has made application for and successfully completed the examination~~, except as allowed by ARM 24.210.610~~.

(3) through (7) remain the same.

(8) In addition to (1) through (7), all applicants for licensure as a salesperson must:

(a) submit proof of completing ~~60~~ 70 hours of approved prelicensing education obtained within a period of 24 months immediately preceding the date of the submission of the application; and

(b) through (9)(b)(ii) remain the same.

(A) three points for an ~~associate~~ associate's degree in real estate;

(B) remains the same.

(C) five points for a ~~bachelor~~ bachelor's degree or higher in business management;

(D) five points for a ~~law degree~~ juris doctorate; or

(E) five points for a ~~bachelor~~ bachelor's degree or higher in real estate.

(iii) through (c) remain the same.

(d) Closed real estate transactions of property owned by the applicant, by a corporation, partnership, trust, or other entity in which the applicant has an interest or by such an entity which employed the applicant as an employee, shall not qualify as experience under ~~(6)(b)~~ (9)(b), or under 37-51-302, MCA.

(e) through (10) remain the same.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-1-131, 37-1-304, 37-51-202, 37-51-302, 37-51-303, MCA

REASON: Because ARM 24.210.610 is proposed for repeal in this notice, the board is striking its reference from (2). Following the 2019 passage of Senate Bill 77, the board amended ARM 24.210.660 to reflect the new 70-hour prelicensing education requirement for salespersons. The board is amending (8)(a) now as this change was inadvertently missed in this rule. Other amendments correct terminology for several educational degrees and an internal subsection's reference.

24.210.801 FEE SCHEDULE (1) through (3) remain the same.

(4) Original property management license	$~~105~~ 50
(5) Active renewal for property management license	~~130~~ 50
(6) Inactive renewal for property management license	~~65~~ 25
(7) and (8) remain the same.	
(9) Activating an inactive license	~~65~~ 25
(10) through (12) remain the same.	

AUTH: 37-1-134, 37-51-203, MCA
IMP: 37-1-134, 37-1-141, 37-51-207, MCA

REASON: The board determined it is reasonably necessary to amend this rule to comply with the provisions of 37-1-134, MCA, by setting fees that provide adequate funding for board operations. The fee changes are also necessary to comply with 17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed twice the annual appropriation amount. The board is reducing renewal fees to gradually decrease the board's cash balance and meet the statutory requirements while ensuring adequate revenue to support board activities through the next biennium. The board estimates these fee reductions will affect 1,131 property management licensees and applicants and will decrease revenue by approximately $71,514 annually.

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER REQUIREMENTS (1) A property management licensee who changes the office location must notify the board office in writing within ten business days of the change. ~~The proper fee must accompany such notice.~~ The board office will then issue a corrected pocket card for the remainder of the renewal year.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-605, MCA

REASON: In MAR Notice No. 24-210-45 (2019), the board removed the fee for changing place of business or affiliation, but inadvertently missed striking the fee reference from this rule. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES (1) through (3)(e) remain the same.

~~(f)~~ (6) ~~the~~ A licensee is not required to either investigate or disclose whether a registered sexual or violent offender resides in proximity to any property with which the licensee manages, shows, negotiates for the rental, or otherwise is involved~~;~~ .

(3)(g) through (ab) remain the same but are renumbered (3)(f) through (aa).

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-136, 37-1-137, 37-1-316, 37-1-319, 37-51-607, MCA

REASON: The board is renumbering this subsection for proper grammar and clarity.

4. The rule proposed to be repealed is as follows:

24.210.610 PREDETERMINATION FOR LICENSING

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-1-135, 37-1-137, 37-1-203, 37-1-307, 37-1-319, 37-51-202, 37-51-302, MCA

REASON: A 2016 legislative audit division report on the licensing of real estate professionals revealed the infrequent use of predeterminations since this rule's adoption in 1990 and recommended eliminating this rule. Department staff also concluded that the board is the only licensing board to use such a process. In 2019 the board removed the predetermination application fee from the fee schedule in MAR Notice No. 24-210-45, and removed the application form from the website. With such infrequent use and per the audit's finding, the board determined it is reasonably necessary to repeal this rule. Additionally, the board recently adopted ARM 24.101.406 to achieve greater consistency among all boards' analyses of applicants with criminal convictions.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., January 20, 2022.

6. An electronic copy of this notice of public hearing is available at www.realestate.mt.gov (department and board's website). Although the department

strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdrre@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.210.401, 24.210.601, 24.210.604, 24.210.611, 24.210.801, 24.210.807, and 24.210.828 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.210.610 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; facsimile (406) 841-2305; or to dlibsdrre@mt.gov.

10. Department staff has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
DAN WAGNER
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.85.105 pertaining to updating the effective dates of Medicaid fee schedules	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 13, 2022, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84336943425; meeting ID: 843 3694 3425; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 843 3694 3425. Find your local number: https://mt-gov.zoom.us/u/kR2fCyefA.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare ~~and~~ & Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~85~~ Federal Register Volume 85, Issue 248, page 84472 (December 28, 2020) effective January 1, 2021, which is adopted and incorporated by reference. Procedure codes created after ~~January 1, 2021~~ January 1, 2022 will be reimbursed using the relative value

units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~July 1, 2021~~ January 1, 2022. The conversion factor for physician services is $41.88. The conversion factor for allied services is $24.75. The conversion factor for mental health services is $21.44. The conversion factor for anesthesia services is $30.57.

(c) remains the same.

(d) The BCBA/BCBA-D services policy adjuster is 115.8%, effective July 1, 2021.

(e) The payment-to-charge ratio is effective July 1, 2021, and is 44.4% of the provider's usual and customary charges.

(f) and (g) remain the same.

(h) Midlevel practitioners receive a 90% provider rate of reimbursement adjustment to the reimbursement of physicians for those services described in ARM 37.86.205(5)(b), effective July 1, 2016.

(i) Optometric services receive a 114.79% provider rate of reimbursement adjustment to the reimbursement for allied services, as provided in ARM 37.85.105(2), effective July 1, 2021.

(j) and (k) remain the same.

(3) The department adopts, and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) The inpatient hospital services fee schedule and inpatient hospital base fee schedule rates including:

(i) the APR-DRG fee schedule for inpatient hospitals, as provided in ARM 37.86.2907, effective October 1, 2021; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version 38, ~~are~~ contained in the APR-DRG Table of Weights and Thresholds, effective October 1, 2021. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective October 1, 2021.

(b) The outpatient hospital services fee schedules including:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the ~~Centers for Medicare and Medicaid Services (~~CMS~~)~~ in Federal Register Volume 85, Issue 249, page 85866 (December 29, 2020), effective January 1, 2021, and reviewed annually by CMS, as required in 42 CFR 419.5 (2016) and as updated by the department;

(ii) through (iv) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~July 1, 2021~~ January 1, 2022.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in 2021 resulting in a dental conversion factor of $35.06 and fee schedule is effective ~~July 1, 2021~~ January 1, 2022.

(e) ~~The dental services covered procedures, t~~The Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective October 1, 2019.

(f) The outpatient drugs reimbursement~~,~~ dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective July 1, 2021:

(i) through (iii) remain the same.

(g) The outpatient drugs reimbursement~~,~~ compound drug dispensing fee range, as provided in ARM 37.86.1105(5), will be $12.50, $17.50, or $22.50, based on the level of effort required by the pharmacist, effective July 1, 2013.

(h) The outpatient drugs reimbursement~~,~~ vaccine administration fee, as provided in ARM 37.86.1105(6), will be $21.32 for the first vaccine and $15.50 for each additional administered vaccine, effective July 1, 2021.

(i) and (j) remain the same.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~October 1, 2021~~ January 1, 2022, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs), as provided in ARM 37.86.1802, effective ~~October 1, 2021~~ January 1, 2022. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~October 1, 2021~~ January 1, 2022.

(l) through (p) remain the same.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~July 1, 2021~~ January 1, 2022.

(r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~July 1, 2021~~ January 1, 2022.

(s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~July 1, 2021~~ January 1, 2022.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~July 1, 2021~~ January 1, 2022.

(u) remains the same.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~July 1, 2021~~ January 1, 2022.

(w) and (x) remain the same.

(y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2021~~ January 1, 2022.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2021~~ January 1, 2022.

(aa) through (5) remain the same.

(6) For the Developmental Services Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~July 1, 2021~~ October 1, 2021.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105, pertaining to updating the effective dates of Medicaid fee schedules.

The department administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low-income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The proposed rule amendments are necessary so that the Montana Medicaid Program can adopt updated Medicare procedure codes that the federal Centers for Medicare & Medicaid Services (CMS) will adopt in January 2022. Montana Medicaid uses Medicare procedure codes. To ensure providers can accurately and timely bill for services they provide to Medicaid members, the department must adopt CMS' updated Medicare rates. Final Medicaid fee schedules are posted after CMS publishes its final fee schedules. The updated codes include new code additions, code deletions, and changes to existing code descriptions and rates.

The proposed changes also include correcting the name of the Centers for Medicare & Medicaid Services, standardizing citations to the Federal Register, and minor grammar and punctuation edits.

The proposed amendments are explained below, regarding the specific subsection of ARM 37.85.105.

(2)(a) and (b) Resource-Based Relative Value Scale (RBRVS)
The department proposes to reimburse procedure codes created on or after January 1, 2022, using the relative value units currently in place, and then revise the fee schedule effective date to January 1, 2022, which is being revised to reflect the updated Medicare procedure codes adopted by the federal Medicare program.

(3)(c), (q), (r), (s), (t), (v), (y), and (z) Fee Schedules
The department proposes to revise the effective date for the following fee schedules to January 1, 2022, to reflect the updated Medicare procedure codes adopted by CMS: hearing aid services, ambulance services, audiology, occupational therapists, physical therapists, and speech therapists, optometric services, lab and imaging services, and licensed direct-entry midwives fee schedules.

(3)(d) Dentist fee schedule
The department proposes to update the Dentist Fee schedule, effective January 1, 2022, to reflect changes to the Current Dental Terminology (CDT) 2021 by removing applicable deleted covered codes and including their updated replacements.

(3)(k) Prosthetic Devices, Durable Medical Equipment, and Medical Supplies
The department proposes to revise the effective date of the reference to the Region D Supplier Manual to January 1, 2022, and revise the effective date of local coverage determinations (LCDs) and national coverage determinations (NCDs), that are provided in ARM 37.86.1802, to January 1, 2022.

The department is also proposing to revise the effective dates for the durable medical equipment fee schedule to January 1, 2022, to reflect the Calendar Year 2022 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule

(6) Developmental Services Division

The department proposes to update the Medicaid youth mental health services fee schedule to October 1, 2021, to change the reimbursement rate for the Comprehensive School and Community Treatment (CSCT) program to $96.00 per day of service. A rural differential payment of 115% of unit rate is proposed to reflect higher costs of services in frontier communities. The updated rate addresses the updated costs providers incur as a result of the CSCT program redesign, as proposed in MAR Notice No. 37-963, which was published on November 5, 2021. The CSCT program is the only rate change proposed on the youth mental health services fee schedule under this proposal.

Fiscal Impact

This proposed rule amendment has estimated costs listed in the table below for the changes related to the CSCT program. The required state share will be provided by local education agencies through intergovernmental transfer agreements.

	SFY2022
State Share	$1,687,641
Federal Share	$3,202,074
Total	$4,889,715

These proposed rule amendments are expected to be budget neutral for all other services.

The department intends to apply these proposed rule amendments retroactively to January 1, 2022, except for the proposed amendment to ARM 37.85.105(6), which the department intends to apply retroactively to October 1, 2021. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., January 21, 2022.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State December 14, 2021.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.11.224, 44.11.226, 44.11.227, 44.11.406, 44.11.409, 44.11.502, and 44.11.603 pertaining to campaign finance laws	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Office of the Commissioner of Political Practices (COPP) proposes to amend the above-stated rules. On December 10, 2021, the COPP published MAR Notice No. 44-2-253 pertaining to the proposed amendment of the above-stated rules at page 1763 of the 2021 Montana Administrative Register, Issue Number 23. The COPP inadvertently failed to notice the appropriate interim committee concurrently with filing the proposal with the Secretary of State (2-4-302(2)(a), MCA). The COPP has subsequently notified the appropriate interim committee. The COPP is extending the comment period in this notice, but the proposed amendments have not changed since the initial notice.

2. The COPP will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m. on December 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

44.11.224 DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) and (2) remain the same.

(3) A candidate for the legislature may use the same account in a campaign depository for primary and general election contributions received without being required to segregate those funds if:

(a) the candidate maintains records concerning when a contribution is received, and for which election the contribution is designated for; and

(b) the account balance does not drop below the amount of general election contributions received until after the day of the primary election.

(3) remains the same but is renumbered (4).

AUTH: 13-37-114, MCA
IMP: 13-37-216, 13-37-218, MCA

REASON: The COPP is amending this rule to reflect the changes in designation of primary and general election contributions for legislative candidates adopted by the 2021 Montana Legislature through its passage and implementation of Senate Bill 224.

44.11.226 LIMITS ON RECEIPTS FROM POLITICAL COMMITTEES

(1) Senate Bill 224 of the 2021 Legislature repealed contribution limits from political committees to legislative candidates.

~~(1) Based on the calculation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to candidates for the state legislature are as follows:~~

~~(a) a candidate for the state house of representatives may receive no more than $1,850;~~

~~(b) a candidate for the state senate may receive no more than $3,050.~~

~~(2) These limits apply to total combined receipts for the entire election cycle of 2020.~~

~~(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.~~

AUTH: 13-37-114, 13-37-218, MCA
IMP: 13-37-218, MCA

REASON: The COPP is amending this rule to reflect the 2021 Montana Legislature's repeal of aggregate contribution limits for candidates from political committees through its passage and implementation of Senate Bill 224. The rule number is being maintained to ensure the structure of the campaign finance rules follow the flow of a campaign.

44.11.227 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE (1) Pursuant to the calculation specified in 13-37-216, MCA, limits on total combined contributions by a political committee, other than a political party committee, or by an individual to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~$710~~ $1,000;

(b) a candidate for other statewide office may receive no more than ~~$360~~ $700;

(c) a candidate for all other public offices may receive no more than ~~$180~~ $400.

(2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~$25,600~~ $100,000;

(b) a candidate for other statewide offices may receive no more than ~~$9,250~~ $75,000;

(c) a candidate for Public Service Commission may receive no more than ~~$3,700~~ $15,000;

(d) a candidate for senate may receive no more than ~~$1,500~~ $3,000;

(e) a candidate for all other public offices may receive no more than ~~$900~~ $2,000.

(3) Pursuant to 13-37-216 ~~and 13-37-218~~, MCA, all contributions must be included in computing these limitation totals, except the personal services exemption found in ARM 44.11.401.

(4) remains the same.

REASON: The COPP is amending this rule to reflect the changes in aggregate contribution limits to candidates from individuals or political parties for the 2022 election cycle adopted by the 2021 Montana Legislature through its passage of Senate Bill 224.

AUTH: 13-37-114, MCA
IMP: 13-37-216, 13-37-218, MCA

44.11.406 MASS COLLECTIONS AT FUNDRAISING EVENTS, REPORTING (1) For the purposes of 13-37-229, MCA:

(a) "Mass collections" made at a fundraising event include the proceeds received from passing the hat or from the sale of items such as campaign pins, flags, emblems, hats, banners, raffle tickets, auction items, refreshments, baked goods, admission tickets and similar items sold at a dinner, rally, auction, dance, bake sale, rummage sale or similar fundraising event, provided that mass collections do not include the proceeds of purchases of ~~$35~~ $50 or more for any candidate or political committee.

(b) remains the same.

(2) For purposes of preparing the statement of deposit required by 13-37-207(2), MCA, a record identifying the name of and amount received from each person must be maintained for a purchase of ~~$35~~ $50 or more at an event for any candidate or political committee. The proceeds of purchases of less than ~~$35~~ $50 may be recorded and deposited in lump sum without identifying the name of the contributor.

AUTH: 13-37-114, MCA
IMP: 13-37-207, 13-37-229, MCA

REASON: The COPP is amending this rule to reflect the change in fundraiser reporting itemization from $35 to $50 contained in Senate Bill 226, adopted and implemented by the 2021 Montana Legislature.

44.11.409 MONETARY DEPOSITS AND EXPENDITURES, ONLY THROUGH DEPOSITORY (1) and (2) remain the same.

(3) All expenditures~~, except expenditures from the petty cash fund,~~ shall be made by check drawn on the designated depository.

(4) ~~Except as stated in (5), all~~ All expenditures shall be drawn on the designated campaign depository by check, debit card, wire transfer, or other

electronic means that clearly identifies the person receiving the payment, and no check or other withdrawal shall be drawn payable to the order of cash.

~~(5) Expenditures from the petty cash fund shall be documented by a receipt voucher designating the date the monies were withdrawn, the exact amount of the withdrawal and by whom the monies were withdrawn, the name of the person or vendor to whom the monies were paid, and the purpose for which the monies were used. The receipt vouchers shall be attached to the cancelled check or other withdrawal receipt which provided the monies for the petty cash fund for the period and shall be maintained as a permanent record of the treasurer.~~

(6) remains the same but is renumbered (5).

AUTH: 13-37-114, MCA
IMP: 13-37-111, 13-37-205, 13-37-207, 13-37-208, 13-37-209, 13-37-215, 13-37-226, 13-37-229, 13-37-231, 13-37-232, MCA

REASON: The COPP is amending this rule to reflect that petty cash usage is no longer allowed by candidates or political committees under Senate Bill 115, adopted and implemented by the 2019 Montana Legislature.

44.11.502 EXPENDITURES, REPORTING (1) through (4) remain the same.

~~(5) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to ARM 44.11.409.~~

(6) remains the same but is renumbered (5).

~~(7) For purposes of the disclosure requirements of 13-37-229 and 13-37-232, MCA, the "purpose" of each expenditure as reported on the commissioner's campaign finance reporting forms shall specifically describe the purpose, quantity, subject matter, as appropriate to each expenditure, and must be detailed enough to distinguish among expenditures for similar purposes. For example, two expenditures for direct mail advertisements should not both be reported as "Flyers."~~

(8) and (9) remain the same but are renumbered (6) and (7).

AUTH: 13-37-114, MCA
IMP: 13-37-225, 13-37-226, 13-37-228, 13-37-229, 13-37-232, MCA

REASON: The COPP is amending this rule to reflect the changes in expenditure reporting adopted by the 2021 Montana Legislature through its passage and implementation of Senate Bill 224. The COPP is also amending this rule to reflect that petty cash usage is no longer allowed by candidates or political committees under Senate Bill 115, adopted and implemented by the 2019 Montana Legislature.

44.11.603 DE MINIMIS (1) remains the same.

(2) Acts, contributions, or expenditures that may, depending on the circumstances, be considered de minimis include:

(a) remains the same.

(b) the provision by an individual or political committee of personal property, food, or services with a cumulative fair market value of less than ~~$35~~ $50 in the aggregate for any single election;

(c) through (3) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-1-101, 13-37-114, MCA

REASON: The COPP is amending this rule to reflect the change in reporting itemization and disclosure from $35 to $50 contained in Senate Bill 226, adopted and implemented by the 2021 Montana Legislature.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov, and must be received no later than 5:00 p.m., January 20, 2022.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Scott Cook at the above address no later than 5:00 p.m., January 20, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 137 persons based on the 1,369 candidates in the 2020 and 2021 election cycles.

7. The commissioner maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. For ARM 44.11.224, 44.11.226, 44.11.227, 44.11.406, 44.11.409, 44.11.502, and 44.11.603, the bill sponsor contact requirements of 2-4-302, MCA, apply. Senator Fitzpatrick and Senator Kary were contacted via email on November 18, 2021, and via email and mail on November 22, 2021. On November 23, 2021,

both senators responded that they had no comments on the amendments as proposed.

9. With regard to the requirements of 2-4-111, MCA, the COPP has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner
Office of the Commissioner of Political Practices

Certified to the Secretary of State December 13, 2021.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New Rule I pertaining to Pharmacy Benefit Manager Definitions and New Rule II pertaining to Pharmacy Benefit Manager Network Adequacy	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 22, 2021, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-265 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1352 of the 2021 Montana Administrative Register, Issue Number 20.

2. On November 12, 2021, a public hearing was held in-person and electronically to consider the rulemaking. Testimony was provided by five proponents and two opponents of the proposed rules; additional attendees were present but did not provide oral testimony.

3. CSI has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (6.6.7901) NETWORK ADEQUACY DEFINITIONS (1) The following definitions apply to this subchapter:

(a) "Mail-order pharmacy" means a pharmacy that provides pharmacist services and primarily dispenses and delivers covered drugs via common carrier.

(b) "Pharmacy network" means a group of pharmacies contracted with a pharmacy benefit manager (PBM) ~~PBM~~ to provide pharmacist services at negotiated prices to an enrollee or an injured worker of a workers' compensation insurance ~~carriers~~ carrier.

(c) "Preferred pharmacy network" means a subset, group, or tier of pharmacies that is designated as preferred within a pharmacy network that ~~agree~~ agrees to charge an enrollee or an injured worker of a workers' compensation insurance ~~carriers~~ carrier a ~~reduced~~ lower ~~copay~~ copayment, ~~or~~ coinsurance, or deductible for pharmacist services or to accept a lower reimbursement rate than other pharmacies in the pharmacy network.

(d) "Retail pharmacy" means any pharmacy that ~~actively~~ provides pharmacist services to the walk-in general public from which an enrollee or an injured worker of a workers' compensation insurance ~~carriers~~ carrier could purchase a covered drug without being required to receive medical services from a provider or institution affiliated with that pharmacy.

AUTH: 33-1-313, 33-2-2409, 33-2-2412, MCA
IMP: 33-2-2402, 33-2-2403, 33-2-2409, MCA

4. CSI has adopted the following rule as proposed, but has moved the substance of proposed New Rule II(2)(a) and (d) to New Rule III, moved the substance of proposed New Rule II(8) to New Rule IV, and moved the substance of several paragraphs within New Rule II. The adopted rule contains the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE II (6.6.7902) NETWORK ADEQUACY (1) A PBM must establish and maintain a pharmacy ~~networks~~ network that ~~include at least 90% of the retail pharmacies actively providing pharmacist services in this state~~ is sufficient in numbers to ensure all pharmacist services are accessible without unreasonable delay, within a reasonable proximity to the business or personal residence of an enrollee or an injured worker of a workers' compensation insurance carrier, and with sufficient choice based on the availability of retail pharmacies.

(2) ~~A PBM's pharmacy network must include a sufficient and adequate number of retail pharmacies to ensure that all pharmacist services are accessible without unreasonable delay, within a reasonable proximity, and with sufficient provider choice.~~ Each pharmacy network offered by a PBM will be considered a separate pharmacy network.

~~(a) A PBM must submit the following reports and information for each pharmacy network and preferred pharmacy network as part of its license or license renewal application to demonstrate to the commissioner a sufficient and adequate pharmacy network:~~

~~(i) a report in a form and in a manner prescribed by the commissioner that designates the number and location of all retail pharmacies, mail-order pharmacies, and specialty pharmacies, if any, in each PBM pharmacy network and preferred pharmacy network; and~~

~~(ii) a network accessibility report that includes:~~

~~(A) the access standard or standards the PBM establishes to determine network adequacy based on the number of miles between the enrollees or injured workers of workers' compensation insurance carriers and nearest retail pharmacy in the pharmacy network;~~

~~(B) the number of enrollees or injured workers of workers' compensation insurance carriers with access to a retail pharmacy in the pharmacy network using the access standard established by the PBM;~~

~~(C) the average number of miles between the enrollees and injured workers of workers' compensation insurance carriers identified in (B) and the nearest retail pharmacy in the pharmacy network;~~

~~(D) the number of enrollees and injured workers of workers' compensation insurance carriers without access to a retail pharmacy in the pharmacy network using the access standard established by the PBM;~~

~~(E) the average number of miles between the enrollees and injured workers of workers' compensation insurance carriers identified in (D) and the nearest retail pharmacy in the pharmacy network; and~~

~~(F) the ratios of retail pharmacies in the pharmacy network to an enrollee or an injured worker of workers' compensation insurance carriers;~~

~~(iii) the PBM's process for monitoring and ensuring on an ongoing basis a sufficient and adequate pharmacy network to meet the pharmacist services needs of enrollees and injured workers of workers' compensation insurance carriers; and~~

(3) The commissioner may consider reasonable criteria or standards to determine the sufficiency and adequacy of a pharmacy network, including:

(a) whether the pharmacy network includes at least 80% of retail pharmacies;

~~(iv)~~ (b) the ~~specific, measurable~~ criteria ~~used by~~ the PBM used to build ~~its~~ a pharmacy network, including~~:~~

~~(A) a description of the criteria the PBM used to build its pharmacy network, including~~ the criteria used to select pharmacies for participation in the pharmacy network;

~~(B)~~ (c) ~~if applicable, a description of~~ the criteria the PBM used to build ~~its~~ any preferred pharmacy network, including the criteria used to place pharmacies in subsets, groups, or tiers; ~~and~~

~~(C)~~ (d) ~~if applicable, a description of~~ the criteria ~~used by~~ the PBM used to select pharmacies to dispense specialty drugs in ~~its~~ the pharmacy network~~.~~;

(e) the access standards and other information provided in the PBM's application and reports; and

~~(b)~~ (f) ~~A PBM may identify, and must report to the commissioner, other reasonable criteria or standards it uses to establish the sufficiency and adequacy of its pharmacy networks, including~~ the willingness of retail pharmacies in the applicable geographic service area to contract with the PBM based upon the same or similar terms and conditions applicable to pharmacies of the same type participating in the pharmacy network ~~under reasonable and relevant standard terms and conditions specific to the pharmacy's business practice and delivery model~~. The commissioner may require the PBM to submit credible evidence documenting a retail pharmacy's refusal to contract based upon the same or similar terms and conditions applicable to pharmacies of the same type participating in the pharmacy network ~~reasonable and relevant standard terms and conditions specific to the pharmacy's business practice and delivery model~~.

~~(c) The commissioner may consider other reasonable criteria or standards to determine the sufficiency and adequacy of each PBM pharmacy network; and~~

~~(d) A PBM must file and update the report required in (a)(i) with the commissioner if the number of pharmacies in the pharmacy network decreases by more than 5% during the year.~~

~~(3) If a PBM does not have a sufficient and adequate pharmacy network, regardless of whether adequacy was determined by a threshold percentage of retail pharmacies in (1), the PBM must ensure that the enrollee or the injured worker of workers' compensation insurance carriers obtains pharmacist services from a retail pharmacy within reasonable proximity of the enrollee or the injured worker of workers' compensation insurance carriers at no greater level of cost sharing to the enrollees or the injured workers of workers' compensation insurance carriers than if the service were obtained from a pharmacy in the pharmacy network with the most favorable cost sharing to the enrollees the injured workers of workers' compensation insurance carriers. The cost sharing paid by the enrollees or injured workers of workers' compensation insurance carriers must accumulate toward the enrollee's plan's deductibles and maximum out-of-pocket amounts.~~

~~(4) A PBM must monitor, on an ongoing basis, the ability and capacity of its pharmacy network to furnish pharmacist services to the enrollee or the injured worker of workers' compensation insurance carriers.~~

(4) A PBM may decline to select a pharmacy to be in a pharmacy network if the pharmacy fails to meet legitimate and reasonable selection criteria of the PBM.

(5) A PBM may not use mail-order pharmacies to meet network adequacy requirements for ~~its~~ a pharmacy network.

(6) A PBM may not require an enrollee or an injured worker of a workers' compensation insurance ~~carriers~~ carrier to use any pharmacy, including a mail-order pharmacy, in which the PBM has an ownership interest, either directly or indirectly through an affiliate, holding company, or subsidiary, for prescriptions, refills, or specialty drugs regardless of day supply.

~~(7) A PBM may decline to select a pharmacy to be in the pharmacy network if the pharmacy fails to meet legitimate and reasonable selection criteria of the PBM.~~

~~(8) A PBM must post electronically a current, accurate, and searchable directory of pharmacies for each of its pharmacy networks.~~

~~(a) In making the directory available electronically, the PBM must ensure that the general public is able to view all pharmacies included in its pharmacy network and preferred pharmacy network through a clearly identifiable link or tab, without creating an account or entering a policy or contract number.~~

~~(b) A PBM must clearly identify in its electronic directories the pharmacies that are in each of its pharmacy networks.~~

~~(c) A PBM must include in its electronic directory a customer service email address and telephone number or electronic link that enrollees, injured workers of workers' compensation insurance carriers, or the general public may use to notify the PBM of inaccurate directory information.~~

~~(9)~~ (7) A PBM may use a restricted pharmacy network as long as the PBM otherwise meets the network adequacy requirements set forth in these rules. ~~A PBM may place legitimate and reasonable requirements on pharmacies with whom it contracts.~~

(8) A PBM must monitor, on an ongoing basis, the ability and capacity of the pharmacy network to furnish pharmacist services to an enrollee or an injured worker of a workers' compensation insurance carrier.

AUTH: 33-1-313, 33-2-2409, 33-2-2412, MCA
IMP: 33-2-2402, 33-2-2403, 33-2-2409, MCA

5. CSI has adopted the following rules comprised of wording from proposed New Rule II and structured as separate, new rules. CSI has moved the substance of proposed New Rule II(2)(a) and (d) to New Rule III and moved the substance of proposed New Rule II(8) to New Rule IV. The adopted rules contain the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE III (6.6.7903) NETWORK ADEQUACY REPORTING

~~(2)(a)~~ (1) A PBM must submit the following reports and information for each pharmacy network ~~and preferred pharmacy network~~ as part of its license or license

renewal application to demonstrate to the commissioner a sufficient and adequate pharmacy network:

~~(i)~~ (a) a report in a form and in a manner prescribed by the commissioner that designates the number and location of all retail pharmacies, mail-order pharmacies, and specialty pharmacies, if any, in each pharmacy network ~~and preferred pharmacy network~~; ~~and~~

~~(ii)~~ (b) a network accessibility report that includes:

~~(A)~~ (i) the access standard or standards the PBM establishes to determine network adequacy based on the number of miles between ~~the~~ an ~~enrollees~~ enrollee or an injured ~~workers~~ worker of a workers' compensation insurance ~~carriers~~ carrier and nearest retail pharmacy in the pharmacy network;

~~(B)~~ (ii) the number of enrollees or injured workers of a workers' compensation insurance ~~carriers~~ carrier with access to a retail pharmacy in the pharmacy network using the access standard established by the PBM;

~~(C)~~ (iii) the average number of miles between the enrollees and injured workers of a workers' compensation insurance ~~carriers~~ carrier identified in ~~(B)~~ (ii) and the nearest retail pharmacy in the pharmacy network;

~~(D)~~ (iv) the number of enrollees and injured workers of a workers' compensation insurance ~~carriers~~ carrier without access to a retail pharmacy in the pharmacy network using the access standard established by the PBM;

~~(E)~~ (v) the average number of miles between the enrollees and injured workers of a workers' compensation insurance ~~carriers~~ carrier identified in ~~(D)~~ (iv) and the nearest retail pharmacy in the pharmacy network; and

~~(F)~~ (vi) the ratios of retail pharmacies in the pharmacy network to an enrollee or an injured worker of a workers' compensation insurance ~~carriers~~ carrier; and

~~(iii)~~ (c) the PBM's process for monitoring and ensuring on an ongoing basis a sufficient and adequate pharmacy network to meet the pharmacist services needs of enrollees and injured workers of a workers' compensation insurance ~~carriers~~ carrier.~~;~~ ~~and~~

~~(2)(d)~~ (2) A PBM must file and update the report required in ~~(a)(i)~~ (1)(a) with the commissioner if the number of pharmacies in the pharmacy network decreases by more than 5% during the year.

AUTH: 33-1-313, 33-2-2409, 33-2-2412, MCA
IMP: 33-2-2402, 33-2-2403, 33-2-2409, MCA

NEW RULE IV (6.6.7904) NETWORK ADEQUACY DIRECTORIES

~~(8)~~ (1) A PBM must post electronically a current, accurate, and searchable directory of pharmacies for each ~~of its~~ pharmacy ~~networks~~ network.

(a) In making the directory available electronically, the PBM must ensure that the general public is able to view all pharmacies included in ~~its~~ each pharmacy network ~~and preferred pharmacy network~~ through a clearly identifiable link or tab, without creating an account or entering a policy or contract number.

(b) A PBM must clearly identify in its electronic directories the pharmacies that are in each ~~of its~~ pharmacy ~~networks~~ network.

(c) A PBM must include in its electronic directory a customer service email address and telephone number or electronic link that enrollees, injured workers of a

workers' compensation insurance ~~carriers~~ carrier, or the general public may use to notify the PBM of inaccurate directory information.

AUTH: 33-1-313, 33-2-2409, 33-2-2412, MCA
IMP: 33-2-2402, 33-2-2403, 33-2-2409, MCA

6. CSI has thoroughly considered the comments and testimony received. A summary of the comments and testimony received and CSI's responses are as follows:

COMMENT 1: Multiple commenters requested that the rules apply to plan and policy years on or after January 1, 2023. One of the commenters suggested that PBMs need time to build provider networks and to develop processes to compile required reports. Another commenter stated that network filings were submitted and approved by CSI earlier this year for 2022.

RESPONSE 1: The Legislature made the Montana Pharmacy Benefit Manager Oversight Act (Act), including the licensing requirement, effective January 1, 2022.

COMMENT 2: Multiple commenters stated that the proposed new rules, or parts thereof, were complex or needed additional clarification.

RESPONSE 2: Proposed New Rule II has been separated for clarity into specific rules focusing on network adequacy (New Rule II), network adequacy reporting (New Rule III), and network adequacy directories (New Rule IV). Changes to the substance of New Rules III and IV from the proposed rules in response to public comment are reflected in the underlining and interlining within those rules. Restructuring within New Rule II is reflected in the underlining and interlining within that rule.

COMMENT 3: Multiple commenters stated that the definition of "mail-order pharmacy" in proposed New Rule I was not consistent with the definition of "out-of-state mail service pharmacy" in 37-7-702, MCA. These commenters further stated that the definition of "mail-order pharmacy" either should be made consistent or should be stricken. One of the commenters also stated that an "out-of-state mail service pharmacy" meets the definition of "pharmacy" in 33-2-2402, MCA.

RESPONSE 3: The definition in 37-7-702, MCA, applies to out-of-state mail service pharmacies. The proposed definition of "mail-order pharmacy" in New Rule I includes both in-state and out-of-state pharmacy services providers. Using the definition of "out-of-state mail service pharmacy" in 37-7-702, MCA, and the definition of "retail pharmacy" in proposed New Rule I would exclude application of the proposed rules to in-state, mail-order pharmacies. CSI intends for these new rules to apply to in-state, mail-order pharmacies.

COMMENT 4: A commenter expressed concern that the definition of "pharmacy network" in proposed New Rule I(1)(b) could be interpreted to mean the entirety of

all pharmacies contracted with a PBM, even if the PBM has several limited or restricted networks within this larger umbrella, which could prevent meaningful assessment of PBM network adequacy.

RESPONSE 4: Network adequacy will be determined at the pharmacy network level, which includes any preferred pharmacy network. Redundant references in the proposed rules to "preferred pharmacy network" are removed in the adopted rules because the definition of pharmacy network includes any preferred pharmacy network.

COMMENT 5: A commenter requested clarification about what constitutes "actively providing pharmacy services in this state" in the definition of "retail pharmacy."

RESPONSE 5: The word "actively" has been removed from the adopted version of New Rule I.

COMMENT 6: A commenter expressed concern that the definition of "preferred pharmacy network" in proposed New Rule I(1)(c) may incorrectly categorize pharmacies that are lower paid but still non-preferred where the definition includes pharmacies that agree "to accept a lower reimbursement rate than other pharmacies in the pharmacy network." The commenter suggested regarding proposed New Rule I(1)(c) that wording be added to clarify that no matter how a PBM defines, configures, or labels its networks, each subset that is offered to plans or patients must be considered individually. The commenter also stated that a pharmacy's preferred status may have no relation to its reimbursement rates.

RESPONSE 6: CSI has modified the definition of "preferred pharmacy network" to clarify that accepting a lower reimbursement rate does not automatically include a pharmacy in the definition of a "preferred pharmacy network."

COMMENT 7: A commenter suggested specific wording for the definition of "preferred pharmacy network" in proposed New Rule I(1)(c) to include lower deductibles, in addition to lower copayments or coinsurance, to more fully capture the various ways in which cost sharing might be reduced in preferred networks.

RESPONSE 7: CSI has modified the definition of "preferred pharmacy network" to reference lower deductibles.

COMMENT 8: Multiple commenters expressed concern about the requirement in proposed New Rule II(1) that a pharmacy network include at least 90% of retail pharmacies in the state. The commenters stated that requiring a fixed percentage in a pharmacy network is inconsistent with the statutory requirement for an adequate network and accessible pharmacy network that ensures reasonable proximity of pharmacies to the businesses or personal residences of enrollees and injured workers. Commenters also asserted that the 90% threshold percentage is contrary to 33-22-1706, MCA, which applies to network adequacy of a health benefit plan.

Multiple commenters suggested that the 90% requirement should be removed or included as one criterion for establishing network adequacy.

RESPONSE 8: CSI does not agree that it is constrained from adopting a fixed percentage or that such a standard is inconsistent with the statutory requirement for an adequate and accessible pharmacy network. Using a percentage of retail pharmacies as a criterion for determining network adequacy is consistent with the approach for determining network adequacy for health insurers in 33-22-1706, MCA. CSI has, however, modified the wording from proposed New Rule II to include an 80% threshold percentage as one criterion for the commissioner to consider regarding pharmacy network sufficiency and adequacy.

COMMENT 9: A commenter expressed concern about proposed New Rule II(1) and the 90% threshold percentage, stating that it would undermine competition among pharmacies and would eliminate incentives to offer discounts to consumers. Another commenter expressed concern that the 90% rule will adversely impact health insurers that have a geographically limited service area. The commenter also expressed uncertainty about how a health insurer offering a Health Maintenance Organization (HMO) or a narrow Preferred Provider Organization (PPO) would comply with the 90% rule. The commenter also stated that the 90% rule is inflexible and an arbitrary percentage that excludes consideration of location and number of members in each geographic area.

RESPONSE 9: Please see Response to Comment 8. The adopted version of New Rule II lists various criteria, including an 80% threshold percentage criterion, that may be considered by the commissioner to assess network sufficiency and adequacy. In addition, CSI may consider the access standards and other information included in a PBM's reports to assess network sufficiency and adequacy, which include consideration of location and number of enrollees or injured workers of workers' compensation insurance carriers.

COMMENT 10: A commenter stated that network adequacy should be determined for each pharmacy network, including any preferred pharmacy network within the pharmacy network. Multiple commenters stated that network adequacy should be determined for a PBM based on the overall network, which includes every pharmacy in the PBM's network.

RESPONSE 10: Network adequacy will be determined at the pharmacy network level, which includes any preferred pharmacy network. Redundant references in the proposed rules to "preferred pharmacy network" are removed in the adopted rules because the definition of pharmacy network includes any preferred pharmacy network.

COMMENT 11: A commenter asserted that proposed New Rule II(2) is inconsistent with the requirements of 33-22-1704, MCA, including the requirement for a health insurer to develop network criteria and to conduct competitive bids or offers.

RESPONSE 11: The adopted version of New Rule II includes an 80% threshold percentage as one criterion for the commissioner's consideration regarding pharmacy network sufficiency and adequacy. CSI retains the discretion to review restricted or narrow networks based on reasonable criteria, including the criteria listed in New Rule II, recognizing that those networks, in light of their purposes and objectives, may not meet the threshold percentage.

COMMENT 12: A commenter asserted that proposed New Rule II(2)(b) exceeds the scope and intent of the Act by requiring consideration of, and a report to the commissioner about, a pharmacy's individual business practices and delivery model. The commenter stated that the requirement is vague and there is no way to objectively determine if contract terms are reasonable when applied to the subjective business practices of a specific pharmacy.

RESPONSE 12: While CSI does not agree that the rule exceeds the scope of its authorizing statute, it has removed the reference to "reasonable and relevant terms and conditions specific to the pharmacy's business practice and delivery model." CSI has updated the adopted rule to clarify CSI will review any "refusal to contract" claim by a PBM on whether a retail pharmacy was offered "the same or similar terms and conditions as other pharmacies of the same type participating in the network."

COMMENT 13: A commenter suggested specific wording changes for proposed New Rule II(2)(d) to address potential, mid-year network inadequacy due to changes like the addition of new individuals onto plans, the movement of individuals from one pharmacy network to another, or the addition of new pharmacy networks.

RESPONSE 13: Under New Rule III(1)(c), a PBM must monitor network sufficiency and adequacy on an ongoing basis. If a PBM adds a new pharmacy network, the PBM would need to submit the new network on the form required by the commissioner for review and approval.

COMMENT 14: A commenter requested clarification about the phrase "reasonable proximity" and suggested that the phrase mean reasonable proximity to the enrollee's home residence.

RESPONSE 14: The adopted version of New Rule II clarifies that reasonable proximity means proximity of pharmacies to the businesses or personal residences of enrollees and injured workers.

COMMENT 15: A commenter stated that the proposed rules are very extensive and have subjective standards for approval of network adequacy. The commenter requested clarification of the phrase "using the access standard established by the PBM" that is used in proposed New Rule II(2)(a)(ii)(B) and (D).

RESPONSE 15: The proposed New Rule II has been separated for clarity into separate rules focusing on network adequacy (New Rule II), network adequacy reporting (New Rule III) and network adequacy directories (New Rule IV). Network

adequacy should not be a new concept for PBMs. As commenters have pointed out, pharmacy networks used by health insurers have long been required to meet network adequacy standards. In this instance, CSI has requested each PBM seeking licensure to provide the access standards it has established for network sufficiency and adequacy.

COMMENT 16: A commenter requested clarification regarding the purpose and calculation of the ratios in proposed New Rule II(2)(a)(ii)(F).

RESPONSE 16: The purpose is to identify the number of pharmacies in relation to enrollees and injured workers of workers' compensation insurance carriers to ensure reasonable and timely access to pharmacist services.

COMMENT 17: A commenter stated that proposed New Rule II uses the singular "network" and the plural "networks" inconsistently.

RESPONSE 17: The use of singulars and plurals has been revised in the adopted rules to be consistent, depending on context.

COMMENT 18: A commenter stated that network adequacy should be limited to retail pharmacy networks. The commenter asserted that applying network adequacy to non-retail pharmacy networks would establish an arbitrary standard based on the existence of physical pharmacies rather than the availability of services.

RESPONSE 18: CSI considers criteria to determine sufficiency and adequacy that includes the number and location of retail pharmacies included in a pharmacy network.

COMMENT 19: Multiple commenters asserted that proposed New Rule II(3) exceeded the scope and intent of the Act. The commenters stated that proposed New Rule II(3) regulated the conduct of health benefit plans and not PBMs; the commenters asserted that proposed New Rule II(3) may be a benefit mandate of a health benefit plan.

RESPONSE 19: CSI recognizes that health insurers generally establish a plan's benefit design, including cost-sharing levels. On that basis, proposed New Rule II(3), which imposed certain requirements related to cost-sharing on PBMs, was not adopted as a final rule. However, CSI retains the authority to take licensure action against a PBM for an insufficient or inadequate pharmacy network.

COMMENT 20: A commenter suggested specific wording changes for proposed New Rule II(3) to disallow a deductible differential, along with prohibition of a copayment or coinsurance differential, for inadequate networks.

RESPONSE 20: Proposed New Rule II(3), which included cost-sharing requirements, was not adopted as a final rule.

COMMENT 21: A commenter suggested that proposed New Rule II(4) through (8)(b) apply to each pharmacy network and each preferred pharmacy network.

RESPONSE 21: Network adequacy will be determined at the pharmacy network level, which includes any preferred pharmacy network. Redundant references in the proposed rules to "preferred pharmacy network" are removed in the adopted rules because the definition of pharmacy network includes any preferred pharmacy network.

COMMENT 22: Multiple commenters asserted that proposed New Rule II(5), a requirement that a PBM may not use a mail-order pharmacy to meet the network adequacy, contradicted the Act. The commenters stated that the definition of "pharmacy" in 33-2-2402(10), MCA, included both physical and electronic pharmacies. Commenters asserted that the Legislature intended physical and electronic pharmacies to be considered for network adequacy purposes.

RESPONSE 22: The use of the term "electronic pharmacy" is not equivalent to the pharmacy being a mail-order pharmacy. The Legislature's use of "physical pharmacy" in 33-2-2409(2), MCA, demonstrates its intent for physical pharmacies to be considered for network adequacy purposes.

COMMENT 23: A commenter asserted that the use of "relative availability of physical pharmacies" in 33-2-2409(2), MCA, indicates the Legislature's intent that mail-order pharmacies be included in the determination of an adequate network particularly in those instances when physical pharmacies are not available in a geographic area. Another commenter stated that, based on proposed New Rule II(5), every enrollee would have access to a retail pharmacy.

RESPONSE 23: When determining the sufficiency and adequacy of a pharmacy network, consideration is given to the availability of retail pharmacies. CSI recognizes that the availability of retail pharmacies may vary by geographic service area.

COMMENT 24: Multiple commenters asserted that proposed New Rule II(6) exceeds the scope of the Act because the Legislature did not limit a PBM's use of pharmacies in which it has an ownership interest.

RESPONSE 24: Proposed New Rule II(6) did not prohibit the use of a pharmacy in which the PBM has an ownership interest. However, a PBM cannot require the use of a pharmacy in which a PBM has an ownership interest.

COMMENT 25: A commenter asserted that proposed New Rule II(6) results in the improper taking or damage of private property rights in violation of the Montana Constitution and 2-10-101 et seq., MCA, and also asserted that CSI has not conducted the impact assessment required by 2-10-105, MCA.

RESPONSE 25: New Rule II(6) does not constitute an improper taking or damage of private property rights in violation of the Montana Constitution and 2-10-101 et seq., MCA. Further, 2-10-101 et seq., MCA, including the impact assessment under 2-10-105, MCA, does not apply because New Rule II(6) does not affect "private property" as defined in 2-10-103, MCA.

COMMENT 26: A commenter expressed concern that proposed New Rule II(6) prohibited a PBM from steering members to pharmacies in which the PBM has an ownership interest and would negatively impact health insurers' efforts to lower costs and improve the quality of care.

RESPONSE 26: The proposed rule did not prohibit a PBM from using a pharmacy or steering enrollees or injured workers to a pharmacy in which it has an ownership interest. Rather, the proposed rule stated that the PBM cannot require the use of a pharmacy in which it has an ownership interest.

COMMENT 27: A commenter asserted that proposed New Rule II(6) was "inconsistent with the other Montana insurance code network adequacy standards."

RESPONSE 27: The adopted rules are not inconsistent with the standards in the health benefit plan network adequacy rule. Nothing in the Act requires that other network adequacy requirements align precisely with the network adequacy requirements for PBMs.

COMMENT 28: A commenter asserted that proposed New Rule II(6) exceeded CSI's rulemaking authority. The commenter asserted that the Act limited CSI's rulemaking authority to only consider "relative availability of physical pharmacies in a geographic area." 33-2-2409(2), MCA. The commenter asserted that the paragraph should be removed from the adopted rules.

RESPONSE 28: Proposed New Rule II(6) does not exceed the statutory rulemaking authority. When determining the sufficiency and adequacy of a pharmacy network, consideration is given to the availability of retail pharmacies. CSI recognizes that the availability of retail pharmacies may vary by geographic service area.

COMMENT 29: A commenter stated that proposed New Rule II(7) should be stricken because a PBM that meets the criteria for network adequacy should not have its rationale reviewed for not contracting with pharmacies that are not included in their network.

RESPONSE 29: Proposed New Rule II(7) was included to provide flexibility to a PBM to refuse to contract with a pharmacy that fails to meet the legitimate and reasonable selection criteria established by the PBM. That information may be relevant with respect to CSI's review of a pharmacy network where a PBM can show that it was unable to contract with a particular pharmacy because of the pharmacy's unwillingness to meet the PBM's legitimate and reasonable selection criteria.

COMMENT 30: A commenter suggested a wording change to proposed New Rule II(8)(a) to limit pharmacy directory access to a PBM's enrollees and only to their pharmacy network and no other network offered by the PBM. The commenter suggested this change would prevent confusion because pharmacy networks are specific to an insurance plan.

RESPONSE 30: Allowing the directory to be accessible by the general public, not just enrollees, would be an important consideration for potential enrollees and injured workers of a workers' compensation insurance carrier to consider the sufficiency and adequacy of a pharmacy network. Clear identification of the pharmacy networks in the directory will prevent confusion about the application of those networks to a specific benefit plan.

COMMENT 31: A commenter stated that it is unclear whether, related to proposed New Rule II(9), a PBM can have a restricted network that does not meet the threshold percentage.

RESPONSE 31: The adopted rule clarifies that the percentage threshold is one criterion that may be considered in assessing network sufficiency and adequacy.

7. The effective date of this rulemaking is January 1, 2022.

/s/ Robert Stutz
Robert Stutz
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy State Auditor
Commissioner of Securities and Insurance
Office of the State Auditor

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II pertaining to Courtesy Car grant applications	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 5, 2021, the Department of Transportation published MAR Notice No. 18-186 pertaining to the proposed adoption of the above-stated rules at page 1445 of the 2021 Montana Administrative Register, Issue Number 21.

2. The department has adopted the above-stated rules as proposed: New Rule I (18.12.901) and New Rule II (18.12.902).

3. No comments or testimony were received.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Malcolm "Mack" Long
Malcolm "Mack" Long
Director
Department of Transportation

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.17.103 and 24.17.127 pertaining to prevailing wage rates for public works projects	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 8, 2021, the Department of Labor and Industry (department) published MAR Notice No. 24-17-380 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1259 of the 2021 Montana Administrative Register, Issue Number 19.

2. The department held a public hearing in Helena on November 12, 2021, over the Zoom videoconference and telephonic platform at which members of the public commented. Written comments were received during the public comment period.

3. The department has thoroughly considered the comments made. A summary of the comments and the department's responses are as follows:

COMMENT 1: One commenter indicated that the current rule classifying the handling of rebar is too broad and is also ambiguous within the existing department rule.

RESPONSE 1: The department acknowledges there is confusion within the current rule. The intent of the rule is to provide that a worker who secures steel bars or mesh in concrete forms in order to reinforce concrete using a variety of fasteners, rod-bending machines, blowtorches, and hand tools, including rod busters, be included in the definition for Ironworkers – Structural Steel and Rebar Placers. This will be clear in the final prevailing wage document.

COMMENT 2: One commenter noted that little training was involved in tying of rebar and that the increase in wage and benefit differential for that work as Cement Masons and Concrete Finishers compared to Ironworkers – Structural Steel and Rebar Placers would put them at a competitive disadvantage in bidding prevailing wage jobs in Montana.

RESPONSE 2: Any confusion noted in Comment 1 above will be remedied in the 2022 prevailing wage document. Since all contractors bidding contracts requiring the prevailing wage must pay the prevailing wage to their workers, there will be no advantage or disadvantage regarding worker wages or benefits.

COMMENT 3: Several commenters indicated that ironwork, including the installing of rebar, includes much more skill and knowledge than just operating a tying gun or

twisting of wires and therefore believe that this work should continue to fall within the definition of Ironworkers – Structural Steel and Rebar Placers in 2022.

RESPONSE 3: The department acknowledges the comment.

COMMENT 4: One commenter asked the department to review the benefit package of truck drivers versus Laborers and Operators.

RESPONSE 4: The rates for each occupation are set separately. The rules for setting highway rates are described in ARM 24.17.121. The department set the rate benefit rate for Truck Drivers in accordance with ARM 24.17.121(4)(b)(i). The data received has an impact on the rates, so the department encourages contractors to complete the survey, as only wage and hourly benefit information received will be considered in setting the standard prevailing rate of wages.

COMMENT 5: One commenter requested the department look into the fringe benefits required to be paid to apprentices on prevailing wage projects. The letter states her local area collective bargaining agreement has a lesser benefit amount agreed upon to be paid than journeymen, "For example, journeyman plumbers in the District #2 are paid as per the collective bargaining agreement at $16.00/hr for fringe benefits. As per the local CBA, apprentices are paid at a rate of $13.10/hr for fringe benefits."

RESPONSE 5: Currently, ARM 24.17.321(2) states, "Apprentices must be paid the percentage of the basic hourly rate required, based on the total time in the craft. If the apprentice performs labor which is subject to a higher wage rate either by contract or by law than that specified in the apprenticeship standards, the higher wage rate shall be paid by the contractor, subcontractor, or employer. In any event, the apprentice is to receive the full amount of the fringe benefits stipulated on the wage decision." When asked, the department has rulemaking authority and facilities to accommodate meetings between interested parties to discuss changes to the current rule.

COMMENT 6: Various individuals and entities submitted additional data or documents for inclusion in the rate-setting process during the comment period.

RESPONSE 6: The department has reviewed the information submitted. The department has incorporated the data as appropriate and has revised certain rates in line with the rate-setting.

4. The following rates in the "Montana Prevailing Wage Rates for Building Construction Services 2021" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Cement Masons and Concrete Finishers

Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs. Align forms for sidewalks, curbs, or gutters. Rates for rebar workers can be found under the Ironworkers classification.

Construction Equipment Operators Group 1
This group includes but is not limited to:
Air Compressor; Auto Fine Grader; Belt Finishing; Boring Machine (Small) 12 inch and under; Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front-End Loader, under 1 cu. yd; Oiler, Heavy Duty Drills; Herman Nelson Heater; Mucking Machine; Oiler, All Except Cranes/Shovels; Pumpman.

Construction Equipment Operators Group 3
This group includes but is not limited to:
Asphalt Paving Machine; Asphalt Screed; Backhoe\Excavator\Shovel, over 3 cu. yds; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes, Creter; Cranes, Electric Overhead; Cranes, 24 tons and under; Curb Machine\Slip Form Paver; Finish Dozer; Front-End Loader, over 5 cu. yds; Mechanic\Welder; Pioneer Dozer; Roller Asphalt (Breakdown & Finish); Rotomill, over 6 ft; Scraper, Single, Twin, or Pulling Belly-Dump; YO-YO Cat; Haul Truck, Articulating Trucks, Vac Truck.

Heating and Air Conditioning

	Wage	**Benefit**
District 1	~~$23.36~~ 31.84	$ ~~6.32~~ 19.89
District 2	$31.84	$19.89
District 3	~~$30.93~~ 31.36	~~$15.69~~ 17.68
District 4	$31.84	$19.89

Per Diem:
All Districts
$~~85~~ 90/day

Sheet Metal Workers

	Wage	**Benefit**
District 1	~~$31.69~~ 31.84	$19.89
District 2	$31.84	$19.89
District 3	$31.84	$19.89
District 4	~~$31.55~~ 31.84	$ ~~9.63~~ 19.89

Per Diem:
All Districts
$~~85~~ 90/day

Plumbers, Pipefitters, and Steamfitters

Travel:
District 1

Special Provision
~~If transportation is not provided, mileage at $0.35/mi. with a separate free zone of 20 miles is added to the amounts above. However, if the employee is traveling more than 75 miles/day, only subsistence is required.~~ If transportation is not provided, mileage at $0.35/mi. for one trip out and one trip back is added to the amounts above. However, if the employee is traveling more than 75 miles/day, only subsistence at the rate of $85.00/day is required.

Special Provision:
~~Employers may pay each Employee the hourly rate for travel time in Employer's Vehicle as an alternative to mileage. When using an Employee's vehicle, Employee Shall be paid at 1 ½ times the hourly rate of pay as an alternative to mileage. If the hourly rate is chosen over mileage pay, hours shall be paid in half (1/2) hour increments.~~ At the contractor's option, mileage for one trip out and one trip back per week may be paid plus subsistence at the rate of $135.00/day.

In the alternative, employers may pay the employee the hourly rate of travel time in employer's vehicle as an alternative to mileage. When using an employee's vehicle, employee may be paid at 1 ½ times the hourly rate of pay as an alternative to mileage. If the hourly rate is chosen over mileage pay, hours shall be paid in half (1/2) hour increments.

~~**Per Diem:**~~
~~**District 1**~~
~~No Per Diem Required.~~

~~**District 2 and 3**~~
~~$125.00/day.~~

~~**District 4**~~
~~No Per Diem Required~~

Roofers

Duties Include:
Metal roofing, covers roofs, walls and foundations with water proofing, insulation and vapor barriers in addition to metal flashings. Roofing includes shingles, low slope membranes, metal roofs, insulation, spray foam, coatings and vapor barriers. Wall coverings include metal panels, insulated metal panels and other waterproofing or rain screen systems. Foundation systems include waterproofing and insulation. Excludes prefabricated metal buildings.

Sprinklerfitters

Travel
All Districts

The following travel allowance is applicable when traveling in employee's vehicle.

0-60 mi.	free zone
>60-80 mi.	$19.00/day
>80-100 mi.	$29.00/day
>100 mi.	$105.00/day + the IRS rate per mile and $8.92 for every 15 miles traveled for one trip out and one trip back.

~~**Special Provision**~~
~~When traveling >100 miles, mileage at $0.54/mi. + $8.59 for every 15 miles traveled at beginning and end of job.~~

~~The following travel allowance is applicable when traveling in employer's vehicle.~~

~~0-100 mi.~~	~~free zone~~
~~>100 mi.~~	~~$105.00/day~~

~~**Special Provision**~~
~~When traveling >100 miles, $8.59 for every 15 miles traveled, at beginning and end of job.~~

Per Diem:
All Districts

No per diem is applicable when traveling in employee's vehicle.

The following per diem is applicable when traveling in employer's vehicle.

0-100 mi.	free zone
>100 mi.	$105.00/day + the IRS rate per mile and $8.92 for every 15 miles traveled for one trip out and one trip back.

5. The following rates in the "Montana Prevailing Wage Rates for Heavy Construction Services 2021" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Construction Equipment Operators Group 1

This group includes but is not limited to:
Air Compressor; Auto Fine Grader; Belt Finishing; Boring Machine (Small) 12 inch and under; Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front-End Loader,

under 1 cu. yd; Oiler, Heavy Duty Drills; Herman Nelson Heater; Mucking Machine; Oiler, All Except Cranes/Shovels; Pumpman.

Construction Equipment Operators Group 3

This group includes but is not limited to:
Asphalt Paving Machine; Asphalt Screed; Backhoe\Excavator\Shovel, over 3 cu. yds; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes, Creter; Cranes, Electric Overhead; Cranes, 24 tons and under; Curb Machine\Slip Form Paver; Finish Dozer; Front-End Loader, over 5 cu. yds; Mechanic\Welder; Pioneer Dozer; Roller Asphalt (Breakdown & Finish); Rotomill, over 6 ft; Scraper, Single, Twin, or Pulling Belly-Dump; YO-YO Cat; Haul Truck, Articulating Trucks, Vac Truck.

Cement Masons and Concrete Finishers

~~**No Rate Established**~~

Wage	**Benefit**
$22.85	$12.85

Zone Pay:

0-30 mi.	free zone
>30-60 mi.	base pay + $2.95/hr.
>60 mi.	base pay + $4.75/hr.

Duties Include:
Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs. Align forms for sidewalks, curbs, or gutters. Rates for rebar workers can be found under the Ironworkers classification.

Construction Equipment Operators Group 1

Wage	**Benefit**
$~~34.30~~ 28.21	$~~15.34~~ 13.65

Construction Equipment Operators Group 2

Wage	**Benefit**
$~~30.35~~ 30.04	$13.65

Construction Equipment Operators Group 7

Wage	**Benefit**
$33.75	$~~13.75~~ 13.65

6. The following rates in the "Montana Prevailing Wage Rates for Highway Construction Services 2021" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Cement Masons and Concrete Finishers

Wage	**Benefit**
$~~24.87~~ 22.85	$~~10.80~~ 12.85

Duties Include:
Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs. Align forms for sidewalks, curbs, or gutters. Rates for rebar workers can be found under the Ironworkers classification.

Construction Equipment Operators Group 1

Wage	**Benefit**
$~~26.52~~ 25.42	$11.50

Construction Equipment Operators Group 5

Wage	**Benefit**
$~~31.44~~ 30.34	$11.50

Construction Equipment Operators Group 6

Wage	**Benefit**
$~~32.13~~ 31.03	$11.50

Construction Equipment Operators Group 7

Wage	**Benefit**
$~~34.23~~ 33.13	$11.50

7. The department has amended ARM 24.17.103 and 24.17.127 as proposed. The rules are effective January 1, 2022. The rates will be effective January 1, 2022, and are applicable to contracts noticed for bids on or after that date.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 14, 2021.

BEFORE THE BOARD OF BEHAVIORAL HEALTH, BOARD OF MEDICAL EXAMINERS, BOARD OF NURSING, AND BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New Rules I and II and the amendment of ARM 24.219.2301 pertaining to requirements for sexual offender evaluation endorsement	)))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 5, 2021, the Board of Behavioral Health, Board of Medical Examiners, Board of Nursing, and Board of Psychologists (Boards) published MAR Notice No. 24-101-311 regarding the public hearing on the proposed adoption and amendment of the above-stated rules, at page 1468 of the 2021 Montana Administrative Register, Issue No. 21.

2. On December 2, 2021, a public hearing was held on the proposed adoption and amendment of the above-stated rules via the videoconference and telephonic platform. Comments were received by the December 3, 2021, deadline.

3. The Boards have considered the comments received. A summary of the comments and the Boards' responses are as follows:

COMMENT 1: Multiple commenters appreciated the coordinated efforts of the Senate Bill 39 Rule Subcommittee and Boards of Behavioral Health, Medical Examiners, Nursing, and Psychologists (Boards) to establish rules implementing the bill.

RESPONSE 1: The Boards appreciate all comments received during the rulemaking process.

COMMENT 2: Multiple commenters noted Senate Bill 39 expanded those licensed professionals able to perform psychosexual evaluations to include licensed clinical professional counselors (LCPCs), licensed clinical social workers (LCSWs), and licensed marriage and family therapists (LMFTs).

RESPONSE 2: LCSWs, LCPCs, LMFTs, psychiatrists, psychologists, and advanced practice registered nurses with a psychiatric mental health nurse practitioner certification are all currently allowed to perform sexual offender evaluations within their existing scopes of practice. Senate Bill 39, codified at 37-1-139, MCA, did not alter any existing scopes of practice. Under the new statute, anyone holding any one of these licenses must now obtain a sexual offender evaluator endorsement to conduct sexual offender evaluations.

COMMENT 3: Multiple commenters noted Senate Bill 39 requires the Boards set experience requirements for the endorsement. The commenters asserted the proposed rules are unclear on the education needed for each base license type to hold an endorsement and recommended the Boards jointly develop clearer rules.

RESPONSE 3: The requirements to obtain an endorsement are described in 37-1-139, MCA, and NEW RULE II. The statute does not give the Boards authority to set any additional educational requirements. Expanding the educational requirements beyond those in statute can only be accomplished through the legislative process. Since it would be difficult to set additional education standards applicable to the four different professions, the Boards believe the supervision requirement and the requirement for membership in the Association for the Treatment of Sexual Abusers (ATSA) or other board-approved national professional organization are sufficient.

COMMENT 4: Commenters recommended the Boards jointly develop rules and set additional education requirements for all the individual base license types to ensure competency and consistency in sexual offender evaluations across the professions.

RESPONSE 4: Existing education requirements for LCSWs, LCPCs, LMFTs, psychiatrists, psychologists, and advanced practice registered nurses with a psychiatric mental health nurse practitioner certification are already authorized and determined by each governing board's respective education statutes and rules. See RESPONSE 3.

COMMENT 5: Multiple commenters requested the Boards define "sexual offender evaluator" in NEW RULE I as it is currently undefined.

RESPONSE 5: Section 2 of Senate Bill 39 amended 46-23-509, MCA, under the authority of the Department of Corrections to require that any individuals performing sexual offender evaluations be issued endorsements under 37-1-139, MCA, which is the statute being implemented by these rules under the authority of the Boards. Sexual offender evaluator is currently defined in 46-23-502(8), MCA, and does not require definition through rulemaking.

COMMENT 6: Multiple commenters suggested the Boards further collaborate to refine the definition of "face-to-face" in NEW RULE I(1). The commenters stated that "two-way" is redundant and unnecessary since (v) requires both audio and visual interaction and that "real time" and "simultaneous" are similar and need further definition. Further, the commenters asked the Boards to reconsider and modify the two-way transmission requirement to allow for times when a supervisor, evaluator, and patient are in three separate locations.

RESPONSE 6: This definition is based on a standard "face-to-face" definition as utilized by several boards including the Board of Behavioral Health regarding teletherapy and supervision of individuals engaged in teletherapy. The Boards may consider the commenters' suggestions regarding "real time" and "simultaneous" in future rulemaking. The Boards note that "two-way" refers to the supervision

requirements for the transmission between the supervisor and the individual being supervised. Teletherapy standards for licensees providing services will govern transmission requirements for licensees providing evaluation to patients.

COMMENT 7: Multiple commenters asked whether or not all supervisors per NEW RULE I(2) need to be licensed since only LCSW, LCPC, and LMFT include the word "licensed" in the titles. Commenters supported all supervisors being licensed.

RESPONSE 7: All supervisors are required to hold a license in good standing as referenced in NEW RULE I(2)(a). To further clarify, the term "licensed" is used for LCSW, LCPC, and LMFT to match the statutory definitions of the professional license titles. "Nurse," "psychologist, and "physician" are all title protected terms under statute and only individuals who are licensed can use those titles.

COMMENT 8: Multiple commenters asked if all supervisors under NEW RULE I(2) must hold Montana licenses or if they could be licensed in other jurisdictions.

RESPONSE 8: Anyone who is a sexual offender evaluator supervisor in Montana under the statutory authority of 37-1-139, MCA, and these rules must hold Montana licenses per NEW RULE I. An individual who is gaining experience in another jurisdiction under that jurisdiction's laws would be held to its requirements. Supervised hours obtained in another jurisdiction under that jurisdiction's laws that meet Montana's requirements for supervised experience would be considered as part of an application for endorsement in Montana.

COMMENT 9: Multiple commenters asked if NEW RULE I(2) requires that supervisors obtain and hold an endorsement to supervise as the rule merely states that they must be "qualified" to conduct sexual offender evaluations.

RESPONSE 9: Once Senate Bill 39 takes effect and sexual offender evaluator endorsements are required to conduct sexual offender evaluations, supervisors must only hold endorsements to be "qualified" to conduct sexual offender evaluations. Prior to the law taking effect, there is no requirement that qualified LCSWs, LCPCs, LMFTs, psychiatrists, psychologists, and advanced practice registered nurses with a psychiatric mental health nurse practitioner certification obtain an additional endorsement and sexual offender evaluations are covered under scopes of practice of qualified licensees.

COMMENT 10: Multiple commenters asked the Boards to add provisions addressing the issue of licensees currently conducting evaluations and supervising to clarify the endorsement pathway and not disrupt short-term services.

RESPONSE 10: Department staff will continue to work to ensure that department procedures and communications to existing licensees appropriately reflect the implementation of the new endorsement statute and rules without interrupting necessary services provided by licensees currently performing evaluations under

existing scopes of practice. It is not necessary to amend the new rules as this is appropriately addressed in department processes and procedures.

COMMENT 11: Multiple commenters suggested the Boards consider amending NEW RULE II to differentiate between applicants holding current Montana licenses and those needing to apply concurrently for both a license and the endorsement.

RESPONSE 11: Standardized department application procedures, instructions, and forms apply to all applicants, whether Montana licensees or those applying from out of state. Department staff will provide endorsement application instructions and materials to the public and applicants in the same manner as for all other board and program applications. No additional clarification in rule is necessary.

COMMENT 12: Multiple commenters questioned why NEW RULE II requires endorsement applicants be members of the Association for the Treatment of Sexual Abusers (ATSA), but does not name the Montana Sexual Offender Treatment Association (MSOTA) as a qualifying professional organization. Commenters stated MSOTA historically established qualification criteria and training guidelines for conducting sexual offender evaluations in Montana, including a competency survey covering the latest research and best practices for treatment and evaluation. Commenters noted the ATSA does not specifically survey clinical knowledge of membership applicants, but acknowledged it does require 2000 hours supervised experience and has the same ethical codes used by MSOTA.

RESPONSE 12: During this rulemaking, the Senate Bill 39 rules subcommittee and the Boards reviewed various professional organizations to determine those meeting the criteria in 37-1-139(3)(d), MCA, of being a "…relevant national professional organization that has ethics of practice for sexual offender assessment and treatment." Since the statutory language limits membership to national organizations, state-level organizations such as MSOTA do not qualify. Further, for state-level organizations to qualify, the statutory language would need to be changed through the legislative process.

COMMENT 13: Multiple commenters asked for confirmation that there are no additional requirements for renewing an endorsement outside of renewing the license itself.

RESPONSE 13: There are no additional requirements for renewing an endorsement, and individuals renewing their licenses only need to meet current renewal requirements for their base license type of LCSW, LCPC, LMFT, psychiatrist, psychologist, and advanced practice registered nurse with a psychiatric mental health nurse practitioner certification. Licensees are still held to professional conduct and ethical requirements under the base license.

4. The Boards have adopted New Rules I (24.250.301) and II (24.250.501) exactly as proposed.

5. The Board of Behavioral Health has amended ARM 24.219.2301 exactly as proposed.

BOARD OF BEHAVIORAL HEALTH
ELAINE MARONICK, LCPC/LMFT
CHAIRPERSON

BOARD OF MEDICAL EXAMINERS
CHRISTINE EMERSON, R.D.
PRESIDENT

BOARD OF NURSING
SARAH SPANGLER, RN
PRESIDENT

BOARD OF PSYCHOLOGISTS
LORETTA BOLYARD, PH.D
CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.413 and the adoption of NEW RULES I, II, and III pertaining to licensure of genetic counselors	))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 5, 2021, the Department of Labor and Industry (department) published MAR Notice No. 24-148-1 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1477 of the 2021 Montana Administrative Register, Issue No. 21.

2. On December 1, 2021, a public hearing was held on the proposed amendment and adoption of the above-stated rules via the videoconference and telephonic platform. No comments were received by the December 3, 2021, deadline.

3. The department has amended ARM 24.101.413 exactly as proposed.

4. The department has adopted New Rules I (24.148.401), II (24.148.2101), and III (24.148.2301) exactly as proposed.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 14, 2021.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.177.501 examinations and 24.177.2301 unprofessional conduct	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 8, 2021, the Board of Physical Therapy Examiners (board) published MAR Notice No. 24-177-36 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1263 of the 2021 Montana Administrative Register, Issue No. 19.

2. On November 2, 2021, a public hearing was held on the proposed amendment of the above-stated rules via the videoconference and telephonic platform. No comments were received by the November 5, 2021, deadline.

3. The board has amended ARM 24.177.501 and 24.177.2301 exactly as proposed.

BOARD OF PHYSICAL THERAPY EXAMINERS
HOLLY CLAUSSEN, PT
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.85.105 pertaining to optometric services rates	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 22, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-966 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1364 of the 2021 Montana Administrative Register, Issue Number 20.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment #1: The department received a comment from the Montana Optometric Association (MOA) expressing concerns related to the resource-based relative value scale (RBRVS) rate calculations. MOA states they disagree with the department's proposed implementation of the legislatively appropriated 1% provider rate increase for optometric providers. They assert the department has provided no explanation or justification for the decrease of the "optometric services policy adjustor" rate variable.

Response #1: The department does not use an optometric service policy adjustor; the department assumed the commenter is referencing the optometric services provider rate of reimbursement. Within the statement of reasonable necessity for MAR Notice No. 37-966, the department details the relationship between the RBRVS rate variables used in calculating optometric service rates and how eliminating the evaluation and management policy adjustor resulted in an additional decrease to the optometric services provider rate of reimbursement.

The legislatively directed 1% increase is achieved by factoring in all optometric services that are billed. As such, some individual services may see more or less than 1% change in reimbursement. This is not new; the department has used this method to achieve similar legislatively directed rate changes for reimbursement of other health care services. This process has been used in every year since the establishment of the RBRVS system of reimbursement for health care services, including optometric services.

The changes to the rate variables must be considered together when determining a provider rate of increase. A rate variable cannot be viewed in isolation to determine

if the 1% provider rate increase is achieved. Below is a demonstrative example of how the proposed rate variables within both MAR Notice No. 37-944 and MAR Notice No. 37-966 result in an overall in aggregate approximate 1% provider rate increase for optometric services. The calculations walk through step by step the impact of each rate variable. Note the impact percentage change for the policy adjustor is calculated based on the utilization case mix for optometric service providers. For demonstration purposes, the example uses $100 as the starting SFY 2021 optometric services expenditures. The $100 represents a hypothetical annual total expenditure for optometric services.

Calculations for MAR Notice No. 37-944

Category	Percentage Change	Estimated Expenditure Impact	Formula
RVU % Change (based on case mix)	3.014%	$103.01	= SFY 2021 Expenditures x (1 + RVU % Change)
Conversion Factor % Change	0.365%	$103.39	= (SFY 2021 Expenditures x (1 + RVU % Change)) X (1 + Conversion Factor % Change)
Provider Rate of Reimbursement % Change	-1.540%	$101.80	= ((SFY 2021 Expenditures x (1 + RVU % Change)) X (1 + Conversion Factor % Change)) x (1 + Provider Rate of Reimbursement % Change)
% Impact of the Evaluation and Management Policy Adjustor	-0.800%	$100.98	= (((SFY 2021 Expenditures x (1 + RVU % Change)) X (1 + Conversion Factor % Change)) x (1 + Provider Rate of Reimbursement % Change)) x (1 + Policy Adjustor % Impact)
	Total Percentage Change	0.9830%	= (Final Estimated Expenditure Impact / SFY 2021 Expenditures) + 1

Calculations for MAR Notice No. 37-966

Category	Percentage Change	Estimated Expenditure Impact	Formula
RVU % Change (based on case mix)	3.014%	$103.01	= SFY 2021 Expenditures x (1 + RVU % Change)
Conversion Factor % Change	0.365%	$103.39	= (SFY 2021 Expenditures x (1 + RVU % Change)) X (1 + Conversion Factor % Change)
Provider Rate of	-2.306%	$101.01	= ((SFY 2021 Expenditures x (1 + RVU % Change)) X (1 + Conversion

Reimbursement % Change			Factor % Change)) x (1 + Provider Rate of Reimbursement % Change)
% Impact of the Evaluation and Management Policy Adjustor	0.000%	$101.01	= (((SFY 2021 Expenditures x (1 + RVU % Change)) X (1 + Conversion Factor % Change)) x (1 + Provider Rate of Reimbursement % Change)) x (1 + Policy Adjustor % Impact)
	Total Percentage Change	1.010%	= (Final Estimated Expenditure Impact / SFY 2021 Expenditures) + 1

The above tables demonstrate that both MAR Notice No. 37-944 and MAR Notice No. 37-966 provide for a provider rate increase percentage of approximately 1% for optometric services. Rounding related to each rate variable can result in the calculated total percentage change slightly above or below the 1% target.

During the August 9, 2021, Children and Family Health and Human Services Interim Committee meeting, the department made a presentation on the relationship of RBRVS rate variables and a final reimbursement rate. This document can be found here:
https://leg.mt.gov/content/Committees/Interim/2021+2022/Children+Families/Rules/aug2021+dphhs+response+to+mar+37+944+949+questions.pdf.

Comment #2: The MOA stated it requested the numbers and calculations used to arrive at the adjustments, demonstration of whether the proposed rates constituted a rate increase or decrease, and why optometric service providers were singled out from the department and stated that it did not receive this information. The MOA states that information that was provided did not demonstrate a rate increase.

Response #2: On September 29, 2021, the department met with representatives of the MOA and several optometric service providers to discuss the department's process for calculating rates. During this meeting, the department's expert in reimbursement explained the rate calculations and demonstrated that the proposed rates represent an aggregate increase in reimbursement for optometric services. Following the meeting, the department emailed the spreadsheet used to demonstrate the rate calculations and 1% provider rate increase to the meeting participants. The department received no comments or questions from the MOA or the individual providers attending the meeting after the spreadsheet was provided.

Contrary to the MOA's comment, the spreadsheet demonstrates the optometric services reimbursement factors proposed in both MAR Notice No. 37-944 and MAR Notice No. 37-966 achieve the rate increase directed by the legislature. The spreadsheet contained both a weighted average analysis and a direct comparison of the January 2021 and the proposed July 2021 optometric services fee schedule. The below table displays the percentage change of the top six most utilized codes for optometric services, when comparing the posted January 2021 fee schedule to

the proposed July 2021 fee schedule. These services accounted for approximately 91% of the total optometric services reimbursement during SFY 2021.

Proc	Description	January 2021 Office Fees	July 2021 Office Fees	Percentage Change
92004	EYE EXAM NEW PATIENT	$122.99	$124.12	0.92%
92014	EYE EXAM&TX ESTAB PT 1/>VST	$103.29	$104.53	1.20%
92015	DETERMINE REFRACTIVE STATE	$16.77	$16.45	-1.91%
92250	EYE EXAM WITH PHOTOS	$36.97	$32.39	-12.39%
92340	FIT SPECTACLES MONOFOCAL	$28.95	$28.95	0.00%
99213	OFFICE/OUTPATIENT VISIT EST	$61.82	$75.23	21.69%
			Average	1.59%

The department disagrees with the contention that optometric providers are being singled out. Optometric service providers receive a provider rate of reimbursement above 100%, meaning they receive an additional reimbursement factor. This year, the RVUs for optometric services increased by an amount greater than the appropriated provider rate increase, meaning the department needed to decrease the optometric services provider rate of reimbursement to ensure optometric service providers did not receive a provider rate increase above the legislatively appropriated amount.

Comment #3: The MOA submitted a comment stating the department failed to provide any explanation or information to demonstrate that the combination of the increased allied services conversion factor and decreased "optometric services policy adjustor" results in a rate increase, or any particular amount of rate increase, for optometric services. The comment also states the department failed to provide any rational explanation to the numbers or methodology used.

Response #3: The department does not use an optometric service policy adjustor; the department assumed the commenter is referencing the optometric services provider rate of reimbursement. The department has explained the correlation between the conversion factor, relative value units, and the optometric services provider rate of reimbursement. Each proposed MAR notice has provided a consistent explanation of the 1% provider rate increase, and the corresponding optometric services provider rate of reimbursement decrease. This was done because of the increase of the applicable RVUs and allied services conversion factor. For additional explanation, please see the response to comment #1.

Comment #4: The department received comments stating the department fails to comply with the legislative appropriations and applicable law. They cite a statute in Title 37, MCA, and assert optometrists should be reimbursed equal to the amount paid to medical doctors and doctors of osteopathy, whose reimbursement the Montana legislature has directed to be paid pursuant to 53-6-125, MCA.

Response #4: As the commenters are aware, this assertion is the subject of a lawsuit filed in state district court and will be resolved through that process. Additionally, the 2021 Legislature was aware of the lawsuit filed by Montana optometrists and chose not to appropriate additional funds to the department and did not direct the department to reimburse optometrists on par with medical doctors and doctors of osteopathy.

Comment #5: The MOA states their analysis of the proposed fee schedule reflects a very significant decrease in reimbursement for many codes.

Response #5: The department agrees that some codes do show a rate decrease, but there are also numerous codes with a rate increase greater than 10%. Individual service codes cannot be viewed in isolation. RBRVS provider rate increases are calculated as demonstrated in the tables provided within response #1.

Comment #6: The MOA submitted a comment stating the department has not provided any rational explanation of why the removal of the evaluation and management policy adjustor required a further decrease to the "policy adjustor for optometric services."

Response #6: The RBRVS reimbursement methodology uses several rate factors when determining reimbursement: a conversion factor, relative value units, provider rates of reimbursement, and policy adjustors. The department does not use an optometric service policy adjustor; the department assumed the commenter is referencing the optometric services provider rate of reimbursement. When the evaluation and management (E&M) policy adjustor was proposed, its decrease impacted the optometric services provider rate increase. When the E&M policy adjustor was eliminated, the optometric services provider rate of reimbursement needed to decrease to account for the increased reimbursement associated with evaluation and management codes. This calculation is demonstrated in the department's first response in this notice.

Comment #7: Several comments were received expressing concern about a potential claims payment delay associated with manually processing optometric service claims. Commenters cite that federal Medicaid regulations (§ 447.45 Timely claims payment) require that Medicaid must provide payment on 90% of clean claims within 30 days and 99% of clean claims within 90 days.

Response #7: When the proposed optometric service provider rate increase was removed from the adoption of MAR Notice No. 37-966, the department had no

choice but to manually price all optometric service claims at the January 2021 fee schedule. Due to system limitations, the Medicaid Management Information System (MMIS) cannot systematically exclude optometric service claims from the July 1, 2021 RBRVS update and process them under the January 1, 2021 codes and rates, through standard claims processing. To accommodate the system limitations and to price all optometric service claims with a date of service on or after July 1, 2021, pursuant to January 1, 2021's optometric services fee schedule, optometric service claims were placed in a queue for manual processing. Claim processing for optometric service providers was delayed for three payment cycles, as the department worked with its fiscal agent, Conduent, on the most efficient and accurate method to price optometric service claims under January 1, 2021's optometric services fee schedule. During the three cycles, some claims were paid, but not a majority. As soon as it was efficient, manual pricing and claims special processing methodologies were identified and implemented. Conduent has worked diligently on ensuring optometric claims are priced and paid with minimal delays. Some delay is inevitable as manual pricing and special claims processing requires numerous people to work each claim manually, rather than being able to process each claim using the electronic claim processing system. Despite the manual intervention, the department is well within the timely claims payment requirements found in 42 CFR 447.45. As of the November 22, 2021 payment cycle, the department has received 8,270 claims requiring manual pricing. Of those claims, 8,230 (99.52%) were processed within 30 days of receipt, and 40 (0.48%) were processed after 30 days but before 90 days.

Comment #8: The department received a comment that included three diagrams. Two of the diagrams compared the department's provider rates of reimbursement to Medicare's, and the third diagram compared optometric provider rates to physician rates. The commenter asserted that the comparisons demonstrate optometrists are discriminated against and are receiving a decrease in reimbursement.

Response #8: The department does not find the diagrams comparing provider rates of reimbursement submitted by the commenter to be demonstrative of the entire reimbursement process. Their first diagram compares Medicare's provider rates of reimbursement for physicians, mid-levels, and optometrists to Medicaid's. This is not an accurate picture of total reimbursement because the provider rate of reimbursement is only one part of the rate calculation.

The second diagram provided does not include values and labels for the x or y-axis. This diagram cannot be evaluated by the department without these essential components.

The third diagram compares reimbursement rates for medical doctors/doctors of osteopathy to optometric rates. The different reimbursement rates for these providers is the subject of a lawsuit filed in state district court, and whether such rates should be different will be resolved through that process. Additionally, the 2021 Legislature was aware of the lawsuit filed by Montana optometrists and chose not to appropriate additional funds to the department and did not direct the

department to reimburse optometrists on par with medical doctors and doctors of osteopathy.

Comment #9: A commenter asked why optometrist reimbursement rates are decreasing while all other providers who are eligible for the same services remain stable.

Response #9: This is not an accurate statement. As demonstrated in responses #1 and #2 of this adoption notice, the department met legislative intent of providing for a provider rate increase of 1% for optometric services.

4. The department intends to apply these rules retroactively to July 1, 2021. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.36.604 pertaining to Montana telecommunications access program	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 5, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-968 pertaining to the proposed amendment of the above-stated rule at page 1500 of the 2021 Montana Administrative Register, Issue Number 21.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. The department intends to apply these rule amendments retroactively to January 13, 2021. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.81.304 pertaining to the Big Sky Rx benefit	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 5, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-969 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1504 of the 2021 Montana Administrative Register, Issue Number 21.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. This rule amendment is effective January 1, 2022.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 38.2.304 pertaining to the department's procedures for collecting fees and other charges	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2021, the Department of Public Service Regulation published MAR Notice No. 38-2-249 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1194 of the 2021 Montana Administrative Register, Issue Number 18.

2. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

38.2.304 FEES, COSTS, ACCOMPANYING FORMS, AND COLLECTIONS

(1) remains as proposed.

(2) Any entity other than the Montana Consumer Counsel that initiates a proceeding before the commission must either:

(a) file a certified IRS Form W-9, Request for Taxpayer Identification Number and Certification, with its initial filing; or

(b) keep a current, certified IRS Form W-9 on file with the department.

(3) through (8) remain as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: In a written comment, the Montana Consumer Counsel said that it appreciated its exemption in (5) of the rule, and requested a similar exemption from the filing requirement in (2) of the rule.

RESPONSE #1: The commission agrees that an exemption in (2) for the Montana Consumer Counsel is appropriate. The commission has added that exemption.

/s/ Lucas Hamilton
Lucas Hamilton
Rule Reviewer

/s/ James Brown
James Brown
Public Service Commission Chair
Department of Public Service Regulation

Certified to the Secretary of State December 13, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XV, and the amendment of ARM 42.39.102 pertaining to the implementation of the Montana Marijuana Regulation and Taxation Act	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 22, 2021, the Department of Revenue (department) published MAR Notice No. 42-1033 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1369 of the 2021 Montana Administrative Register, Issue Number 20.

2. On November 16, 2021, the department held a public hearing to consider the proposed adoption and amendment. There were no commenters present to provide testimony or commentary in support of the rulemaking. The following commenters appeared and provided oral testimony in opposition to the proposed rulemaking: Casey Palmer, Sugar Leaves; David Hiller, Yellowstone Buds; Christopher Young, Young Law Office; Katrina Farnum, Garden Mother; Nathan Kosted, Stillwater Laboratories; Susan Stanley, Sensicare; Shelley Sink, Evergreen 406; Mariah Bond, Euphoria Wellness; Sam Belanger, Montana Hemp Farmer's Cooperative/Green Ridge; Kate Cholewa, Montana Cannabis Industry Association (MTCIA); Jason Smith, Montana Advanced Caregivers; Jon Speare, White Buffalo Laboratories; Karen Roellich; Josh Vandewetering, Lionheart Caregiving Dispensary; Billie Rhoades, Lionheart Caregiving Dispensary; Erica Sciate; Joanna Barney, Sacred Sun Farms; and Richard Abromeit, Montana Advanced Caregivers. The department received written comments from interested persons in support of the proposed rules and also received written comments submitted by interested persons in opposition.

3. The department has adopted New Rules IX (42.39.115), XI (42.39.315), XII (42.39.316), and XV (42.39.319) as proposed.

4. The department has adopted the following new rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (42.39.109) LICENSE, APPLICATION, AND RENEWAL FEES

(1) Initial licensure and ~~annual~~ renewal fees for the following license types and endorsements are:

(a) Two-year ~~M~~marijuana transporter license: $10,000.

(b) through (e) remain as proposed.

(f) Manufacturer license:

(i) remains as proposed.

(ii) $10,000 for each manufacturing facility that produces, on a monthly basis, between ten pounds of concentrate and 15 pounds of concentrate; ~~and~~

(iii) $20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds of concentrate~~.~~; and

(iv) any manufacturing licensee that produces, on a monthly basis, more than 15 pounds of concentrate, shall pay an additional $1,000 per pound.

(g) remains as proposed.

(2) At the time of the initial application and at renewal, an applicant shall pay the department a nonrefundable processing fee equal to 20 percent of the license fee identified in (1). The department will not begin processing an application until it receives all processing fees. A licensee shall pay the department the remaining 80 percent of the license fee upon department notification of approval of its application or renewal.

(3) through (6) remain as proposed.

AUTH: 16-12-112, 16-12-202, 16-12-204, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

IMP: 16-12-112, 16-12-204, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

NEW RULE II (42.39.401) MARIJUANA MANUFACTURER LICENSES

(1) through (4) remain as proposed.

(5) A marijuana manufacturer licensee that manufactures above its licensure level may be subject to administrative proceedings. In determining whether a marijuana manufacturer licensee has manufactured above its licensure level, the department will determine the average amount of concentrate produced each month over the previous 12 months.

(6) and (7) remain as proposed.

(8) A marijuana manufacturer licensee must:

(a) remains as proposed.

(b) maintain detailed instructions for making each infused product, concentrate, or extract, which shall be kept confidential by the department; and

(c) remains as proposed.

(9) A marijuana manufacturer licensee that engages in chemical manufacturing must:

(a) through (f) remain as proposed.

(g) have all applicable ~~material~~ safety data sheets readily available.

(10) remains as proposed.

(11) A marijuana manufacturer licensee that engages in chemical manufacturing may not use:

(a) class 1 solvents according to the Q3 Tables and List Guidance for Industry published by the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research;

(b) through (14) remain as proposed.

(15) A marijuana manufacturer licensee may not treat or otherwise alter a marijuana product with any synthetic ~~non~~cannabinoid additive, including Delta-8 tetrahydrocannabinol, that would increase potency, toxicity, or addictive potential~~, or that is added for purposes of making the product more appealing to children~~.

(16) and (17) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-204, 16-12-222, MCA

NEW RULE III (42.39.405) MARIJUANA CULTIVATOR LICENSES (1) A marijuana cultivator license allows a marijuana cultivator to plant, cultivate, grow, dry, package, and label marijuana and sell marijuana to licensed marijuana manufacturers, licensed dispensaries, and to other licensed marijuana cultivators, and to sell marijuana products to licensed dispensaries. Marijuana cultivator licensees may not sell marijuana flower to other marijuana cultivator licensees.

(2) through (12) remain as proposed.

~~(13) In accordance with Section 117, Ch. 576, L. 2021, a marijuana cultivator licensee must discontinue the use of hoop houses on or before October 1, 2023.~~

(14) remains as proposed but is renumbered (13).

AUTH: 16-12-112, MCA
IMP: 16-12-112, 16-12-203, 16-12-204, 16-12-210, 16-12-222, 16-12-223, MCA

NEW RULE IV (42.39.409) MARIJUANA DISPENSARY LICENSES

(1) through (6) remain as proposed.

(7) A marijuana dispensary licensee and its employees may sell marijuana paraphernalia to registered cardholders 18 years of age and older and to consumers 21 years of age and older.

(8) Marijuana dispensary customers must not handle marijuana or marijuana products outside of its packaging prior to purchase. Customers may ~~not~~ return marijuana or marijuana products ~~unless the items are unopened and in their original packaging~~ but the dispensary must destroy those products and the destruction must be entered into the seed-to-sale tracking system. Nothing in this rule prevents a marijuana dispensary licensee from refusing product returns.

(9) and (10) remain as proposed.

(11) A marijuana dispensary licensee and its employees must refuse to sell marijuana or marijuana products at the medical marijuana tax rate to registered cardholders who do not possess and present a valid registry identification card or temporary registry identification card at the time of sale.

(12) remains as proposed.

(13) The prohibition in 16-12-208, MCA, on marijuana dispensaries selling hemp ~~also includes the prohibition of selling cannabidiol products~~ is limited to hemp flower and hemp plants.

(14) and (15) remain as proposed.

(16) A marijuana dispensary licensee, its employees, or a commercial third party must not deliver marijuana or marijuana products to consumers.

(17) A marijuana dispensary licensee may continue to sell marijuana and marijuana products that have been tested under the medical marijuana program statutes and administrative rules.

AUTH: 16-12-112, 16-12-222, MCA
IMP: 16-12-112, 16-12-201, 16-12-222, 16-12-224, MCA

NEW RULE V (42.39.413) MARIJUANA TRANSPORTER LICENSES

(1) through (3) remain as proposed.

(4) All distribution and delivery of marijuana and marijuana products must:

(a) remains as proposed.

(b) depart from a licensed premises and be delivered to a licensed premises or to a registered cardholder's address, in which case the registered cardholder must provide a valid registry identification card to the transporter;

(c) be accompanied by a transport manifest derived from the seed-to-sale tracking system that contains the following information:

(i) through (iv) remain as proposed.

(v) transporter's driver's license number, vehicle ~~year,~~ make, model, and license plate number;

(vi) through (15) remain as proposed.

AUTH: 16-12-112, 16-12-222, MCA
IMP: 16-12-112, 16-12-222, MCA

NEW RULE VI (42.39.415) COMBINED USE LICENSES (1) and (2) remain as proposed.

(3) A combined use licensee is subject to the marijuana laws, including 16-12-223, MCA.

AUTH: 16-12-112, 16-12-225, MCA
IMP: 16-12-225, MCA

NEW RULE VII (42.39.417) MARIJUANA TESTING LABORATORY LICENSES (1) remains as proposed.

(2) A current marijuana testing laboratory licensee may continue to operate under its existing license and shall pay the annual license renewal fee provided for in [NEW RULE I] at its next renewal date.

~~(2)~~ (3) The department shall begin accepting applications for new marijuana testing laboratories on January 1, 2022.

(3) and (4) remain as proposed but are renumbered (4) and (5).

(6) A marijuana testing laboratory licensee must provide and maintain, at its own expense, analytical testing laboratory professional liability insurance with an aggregate limit of one million dollars prior to the issuance of a license.

(7) A marijuana testing laboratory licensee must obtain and maintain a $25,000 surety bond which names the department as loss payee in the event the laboratory licensee fails to adhere to the security plan approved by the department, or it otherwise operates the facility in a manner that allows for, or results in theft,

loss, or diversion of marijuana items. A copy of the bond must be submitted to the department as a part of the license application process.

AUTH: 16-12-112, 16-12-202, MCA
IMP: 16-12-112, 16-12-202, 16-12-222, MCA

NEW RULE VIII (42.39.420) MARIJUANA STORAGE FACILITY ENDORSEMENT (1) A marijuana transporter or a marijuana testing laboratory ~~may~~ shall obtain a marijuana storage facility endorsement for any overnight storage of marijuana or marijuana products. A marijuana storage facility endorsement allows a marijuana transporter or marijuana testing laboratory to maintain a separate, off-site storage facility.

(2) A marijuana storage facility may only be used for the temporary storage of marijuana or marijuana products, not to exceed 48 hours. A storage facility may not be used to grow, process, test, manufacture, consume, or sell marijuana or marijuana products.

(3) and (4) remain as proposed.

AUTH: 16-12-112, 16-12-222, MCA
IMP: 16-12-202, 16-12-222, MCA

NEW RULE X (42.39.314) GENERAL LABELING REQUIREMENTS

(1) and (2) remain as proposed.

(3) All marijuana or marijuana products shall be labeled with the following information:

(a) strain name;

(b) the common or usual name of the marijuana product (e.g., flower, inhaled extract, edible, cookie, or drinkable, topical, transdermal patch);

(b) through (h) remain as proposed but are renumbered (c) through (i).

(4) through (9) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-1-101, 16-12-112, 16-12-208, 16-12-224, MCA

NEW RULE XIII (42.39.317) LABELING OF NON-INGESTIBLE MARIJUANA-INFUSED PRODUCTS (1) In addition to the general labeling requirements set forth in [NEW RULE X], each packaging of non-ingestible marijuana-infused products shall be labeled with the following information:

(a) remains as proposed.

(b) a marijuana facts panel containing the following information:

(i) the milligrams per ~~serving~~ application size or dose of:

(A) through (D) remain as proposed.

(ii) the number of ~~serving~~ applications or doses per package; and

(iii) for multi-~~serving~~ dose packages, the total milligrams per package of:

(A) through (3) remain as proposed.

AUTH: 16-12-112, MCA

IMP: 16-1-101, 16-12-112, 16-12-208, MCA

NEW RULE XIV (42.39.318) LABELING REQUIREMENTS FOR MARIJUANA CONCENTRATES AND EXTRACTS (1) In addition to the general labeling requirements set forth in [NEW RULE X], each package of marijuana concentrate sold to a customer shall be labeled with the following information:

(a) and (b) remain as proposed.

(c) a marijuana facts panel containing the following information:

(i) remains as proposed.

(ii) for marijuana concentrates that do not require the application of heat before they are administered or consumed:

(A) remains as proposed.

(B) the number of servings or doses per package;

(d) through (3) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-1-101, 16-12-112, 16-12-208, MCA

5. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.39.102 DEFINITIONS The following definitions apply to this chapter:

(1) through (9) remain as proposed.

(10) "Cultivate" means to grow, propagate, clone, or harvest marijuana for use by registered cardholders or consumers.

(11) through (40) remain as proposed.

~~(41) "Proof of residency" means a readable photocopy of a current Montana driver's license, Montana state-issued identification card, or tribal identification card.~~

~~(42)~~ (41) "Property owner permission form" means a completed, signed, and notarized form which gives an ~~registered cardholder,~~ applicant~~,~~ or licensee who is renting or leasing the property where marijuana will be cultivated and manufactured ~~for medical purposes,~~ permission to do so~~,~~ by the property owner. The form must be provided by the department.

(43) and (44) remain as proposed but are renumbered (42) and (43).

~~(45)~~ (44) "Registered premises" ~~means the premises specified in an application for a license that is owned or in possession of the licensee and where the licensee is authorized to cultivate, manufacture, dispense, store, transport, or test medical marijuana.~~ has the same meaning as "licensed premises."

(46) through (52) remain as proposed but are renumbered (45) through (51).

~~(53)~~ (52) "Total potential psychoactive THC" means the highest theoretical concentration of psychoactive THC available in a marijuana item achievable only through the complete conversion of THCa to THC with the application of heat during administration/consumption. Total potential psychoactive THC is the sum of THC and THCa calculated using the following equation: Total potential psychoactive THC = (THCa x 0.877) + THC.

(54) and (55) remain as proposed but are renumbered (53) and (54).

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-307, 50-46-308, 50-46-310, 50-46-318, 50-46-344, MCA

6. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: The department received several comments on New Rule IV(13), both in writing and at the public hearing, that could be summarized as a general objection to the rule's interpretation of the statutory prohibition of a marijuana dispensary licensee selling hemp to include cannabidiol (CBD) products, which included objection from Mr. Belanger's Cooperative. Many commenters contend that the department misconstrued this portion of the legislative intent of House Bill 701 (HB 701).

Mr. Vandewetering provided observational commentary about Montana's advances of legitimizing the industry and thanked the department for its part in that. He also commented his belief that the department "over-interpreted" the definition of hemp and suggests that the legislature really intended to regulate the flower portion and not that marijuana dispensaries could not sell CBD products when retail gas stations could.

The department also received direct feedback from the legislature, through its Revenue Interim Committee and Economic Affairs Interim Committee meetings, held on November 9 and November 17, 2021, respectively. Both committees voiced that the legislature did not intend HB 701 to contain a dispensary restriction on the sale of hemp-derived CBD products and that the department would be fulfilling legislative intent by amending the rule to permit the sale of CBD at licensed dispensaries.

RESPONSE 1: The department thanks all commenters and the interim legislative committees for their comments. Based on the commentary and testimony received, the department has amended New Rule IV upon adoption to refine the hemp restriction to hemp flower and hemp plants and not CBD products.

COMMENT 2: The department received written commentary and testimony at the public hearing that certain proposed fees in New Rule I are excessive, such as general license fees, transporter license fee, testing laboratory license fees, change of location fee, and fingerprint fees.

There was general commentary that questioned whether the 20 percent amount in (2) is in addition to the license fee. Ms. Cholewa and Mr. Young commented their understanding that the 20 percent payment in (2) is a non-refundable down payment of the license fee. Mr. Young also commented about the need for fingerprint fees in (5). Ms. Barney wanted clarification that the 20 percent amount only applied to license fees, not to the miscellaneous fees (e.g., background check).

The department received commentary that the fees charged by the department to licensees will pass through and inflate the costs of marijuana and

marijuana products which will influence the purchasing public to opt for the illicit market at lower prices.

The department also received commentary regarding the amounts charged to a licensee for testing marijuana and marijuana products and the commenters advocated for additional testing laboratories to foster lower testing fees through increased competition.

Mr. Speare and Ron Brost, Director of Stillwater Laboratories, questioned the necessity for the department's proposed fee for marijuana testing laboratories of $5,000 and that the fee is excessive compared with the current fee of $2,000. Mr. Speare requested a "phased in" increase if any increase was made at all.

Ms. Cholewa requested clarification of the department's overproduction penalty assessment procedures since license fees for manufacturers are based on the volume of concentrate and production is annual.

RESPONSE 2: The legislature authorized the department to designate certain fees sufficient to administer and enforce the Montana Marijuana Regulation and Taxation Act (Act) (See 16-12-112(1)(q), MCA). New Rule I is a fee schedule rule that includes several statutory fees as well as those fees that in the department's estimation satisfy the needs and requirements of 16-12-112(1)(q), MCA.

The transporter license is a two-year license so that fee is for that extended license period and the department contends is commensurate in scale to the other license fees for the industry such as a dispensary, tier one manufacturer, or testing laboratory. The department understands that clarity of the length of the license period could be improved, so the department has amended (1)(a) upon adoption.

The department acknowledges to Messrs. Speare, Kosted, and Brost that the annual license fee for testing laboratories of $5,000 does represent an increase from the current amount that was adopted by the Department of Public Health and Human Services (DPHHS) in 2018 under ARM 37.107.117. And without speculating why DPHHS set the license fee at the prior amount it did (an arbitrary mid-range between $1,000 and $5,000, which DPHHS stated in its rulemaking), the department contends the testing laboratory fee in New Rule I is now commensurate with the other license types and is necessary to administer and enforce the Act under the expanded marketplace. Moreover, the testing laboratories testified and have provided previous testimony to the department and the interim committees about the amount of capital improvements they are making - or have made - in preparation of the expanding marketplace. But when increased license fees are included in this context, their contentions of an undue burden are not sustained.

The department appreciates the comments regarding the location change fee in New Rule I(6), but a change of business location is a substantial transaction and requires more than a plan or application review; there is a substantial amount of department time and resources to process the change. Multiple premises inspections are required (wrapping up one location, approving the other) and determining premises suitability under the marijuana laws. The department believes the fee is appropriate and declines to change it at this time.

As to the 20 percent non-refundable fee comments, the department responds that additional guidance has been provided in (2) which clarifies the license fee and that the balance of it is due and payable upon approval of the application or renewal.

The $30 charge per background check in (5) is a "hard cost" that the department pays to process criminal background checks which is passed on to the person submitting the background check. The department cannot lessen the fee and effectively administer applicant licensing; and as the department's background check costs increase over time, the cost to the applicant/licensee will likely increase as well.

In response to the comments that processing, license, or ancillary fees in the rule are excessive and will inflate the costs of product which will lead customers to purchase through the illicit market, the department is sensitive to the concerns raised although they are speculative. The industry is not a new one in Montana and the department has weighed legislative intent regarding fee structures with the costs and benefits of the expanding marketplace. The department believes the fees are appropriate, reasonable, and declines to change the fee amounts at this time.

The department understands the comments regarding marijuana and marijuana products testing costs but declines to respond as they are outside the scope of this rulemaking.

To answer Ms. Cholewa's overproduction penalty comment, 16-12-221, MCA, provides that manufacturer license fees are based on concentrate produced each month. The department intends to reconcile manufacturing overproduction with a licensee annually and has amended New Rule II(5) accordingly.

COMMENT 3: Ms. Cholewa commented that manufacturing license fees do not make sense for those who manufacture cannabis-infused goods but do not produce concentrate because they are paying the same license fee ($5,000) as those manufacturers who are producing concentrate. Ms. Cholewa advocated for a flexible fee solution for those who do not produce concentrate.

RESPONSE 3: Ms. Cholewa is correct that manufacturing license fees begin at $5,000 even for manufacturers who produce less than one pound of concentrate, or none. See 16-12-221(6)(a)(i), MCA. While the department may create additional fee levels as necessary under 16-12-221(6)(b), MCA, the department believes the request falls outside the scope of this initial rulemaking, but the department is amenable to future rulemaking if there is necessity.

COMMENT 4: Mr. Palmer and Ms. Barney made comments related to exit packages and whether it was redundant to require two sealed bags.

RESPONSE 4: Section 16-12-208(9), MCA, defines exit packaging as " . . . . a sealed, child-resistant certified receptacle into which marijuana or marijuana products already within a container are placed at the retail point of sale." This is reflected in the department's definition in ARM 42.39.102 and the implementation of exit packaging in New Rule XV (ARM 42.39.319).

Based on the comments provided, the department concludes that a marijuana dispensary licensee may opt to have only one exit package as long as the package

complies with the child resistant package requirements and is limited to the design elements and language limitations of 16-12-208(6), MCA.

COMMENT 5: Messrs. Hiller, Smith, Abromeit, and Ms. Rhodes commented that outdoor cultivators should be permitted to tier-up an existing location, but that is not provided in New Rule III.

Ms. Rhoades also asked the department to clarify if a cultivator could tier-up its license and transfer locations and if the $2,500 change of location fee would apply to cultivators.

RESPONSE 5: The department directs Messrs. Hiller, Smith, Abromeit, and Ms. Rhodes to Comment and Response No. 40 (below).

In response to Ms. Rhode's questions about a cultivator transferring locations, the department has yet to determine whether these types of transfers are authorized under the Act or what kind of administrative rules would be necessary.

COMMENT 6: Mr. Hiller and others provided commentary or asked the department to clarify which license types are permitted to transport their own marijuana and marijuana products without the need for a transporter license.

RESPONSE 6: Section 16-12-222(4), MCA, provides, in pertinent part, that ". . . a person who obtains a cultivator license, manufacturer license, adult-use dispensary license, medical marijuana dispensary license, or testing laboratory license or is an employee of one of those licensees, may. . . . [t]ransport marijuana or marijuana products between other licensed premises without a transporter license." The department contends no additional clarification is necessary.

COMMENT 7: Mr. Young commented that New Rule II(8)(b) requires licensees to maintain and provide to the department detailed manufacturing instructions, which may be considered to be "trade secrets" and the department should keep this information confidential.

Ms. Barney also provided commentary that concurs with Mr. Young.

RESPONSE 7: The department understands Mr. Young's and Ms. Barney's concerns and has amended the rule to reflect that any licensee manufacturing information or processes that are reviewed by or provided to the department will be treated as confidential and proprietary.

COMMENT 8: Mr. Young provided commentary about the transporter provisions in New Rule II(17) and attempted to correlate the transport provisions to multi-party transactions and contracts governed by the Uniform Commercial Code.

RESPONSE 8: The department declines to respond to Mr. Young's comments because they fall outside the scope of the rulemaking and were presented to the public hearing audience more as a solicitation for legal representation than comments to the rulemaking.

COMMENT 9: Mr. Young commented on New Rule IV(6), and questioned whether Montana's DRAM shop law applies to a marijuana dispensary licensee selling marijuana or marijuana products to any person obviously or apparently under the influence of drugs or alcohol.

Other commenters also questioned the retail sales restriction against selling marijuana or marijuana products to any person obviously or apparently under the influence of drugs or alcohol. Ms. Farnum offered related commentary that medical patients come to her dispensary to purchase marijuana and marijuana products in order to transition from prescription drugs and those customers may be under some influence of lawful drugs at the time of purchase.

RESPONSE 9: The department declines to respond to Mr. Young's DRAM shop comments because they fall outside the scope of the rulemaking, are speculative and request the department to render a legal opinion, and were presented to the public hearing audience more as a solicitation for legal representation than comments to the rulemaking.

The department responds to the other commenters that retail sales restrictions of marijuana and marijuana products to include any person obviously or apparently under the influence of drugs or alcohol are identical to those for alcoholic beverages sales, are generally directed at the adult use/recreational market, and are consistent with the intent of the Montana Marijuana Regulation and Taxation Act. The department will be coordinating training on identifying signs of intoxication in the near future. Until such time as the training is developed and the industry receives the training, the department requests licensees and their employees exercise discretion when considering a marijuana or marijuana product sale to any person obviously or apparently under the influence of drugs or alcohol.

COMMENT 10: Mr. Young asked whether the department would allow a business which uses independent contractors as marijuana workers solely for the purpose of supplying workers to the industry - in other words, a staffing agency.

RESPONSE 10: Based on the cursory information provided, the department responds that the requested activity is a fair reading of the rules and appears allowable.

COMMENT 11: Ms. Farnum questioned how the department will assess fees for a two-license, single location into another single location - would the change of location fee be charged twice?

RESPONSE 11: When moving two licenses that operate out of one location into a new single location only one $2,500 fee is charged.

COMMENT 12: Ms. Farnum asked about the manufacturing restriction against noncannabinoid additives increasing the potency of marijuana or marijuana products and whether that applies to additives like ginger or caffeine.

RESPONSE 12: The department understands the scope of the question and to improve clarity, the department has amended New Rule II(15) to reflect synthetic cannabinoids - including Delta-8 tetrahydrocannabinol - are subject to the manufacturing restriction.

COMMENT 13: The department received comments regarding canopy measurement methodologies and why the department does not include vertical measurement of the canopy space. Ms. Cholewa advocates Montana adopt a more precise definition like that in California.

RESPONSE 13: The department is currently working with its seed-to-sale tracking vendor to implement a "harvest scheduler" that the department believes will ease concerns over canopy measurement. The harvest scheduler is a tool that the department plans to use to schedule the measurement of canopy sizes at consistent times based on the development of the cultivator's crop which will improve accuracy of canopy measurement. The department will communicate the status of these system improvements as they become available.

COMMENT 14: Commenters have asked the department about the reasoning behind phasing out hoop houses by October 1, 2023, as reflected in New Rule III(13).

RESPONSE 14: The department did not independently propose this determination. Section 117, HB 701, requires the discontinuation of hoop houses by the stated date. If commenters are inclined to pursue the reversal of this requirement, it will require an act of the legislature. Even so, and based on the comments the department has removed New Rule III(13) as it is unnecessarily redundant to the Act.

COMMENT 15: Ms. Farnum and other commenters questioned the restriction of customer returns of marijuana or marijuana products found in New Rule IV(8). The commenters advocated for an optional return policy that would track the product return and destruction through the seed-to-sale tracking system.

RESPONSE 15: The department agrees and based on the comments has amended New Rule IV(8) upon adoption.

COMMENT 16: Ms. Farnum presented commentary regarding the marijuana transporter rule, New Rule V. She is concerned about the amount of business asset or location information that is open and public on transport manifests and whether any of that information can be kept off the manifests and unique license identifications can be used instead.

Ms. Farnum also asked for clarification of (9) and what is "immediately" when reporting product transport discrepancies, about vehicle security system required in (11)(b).

Ms. Farnum also asked the following questions:

1. whether standardized procedures for testing laboratories could be implemented;

2. what "temporary" means for storage facilities;

3. if background check results used for other purposes can be used for marijuana worker permits and how long employees can use their badges; and

4. whether a grace period could be a part of the new labeling requirements and if the word "cannabis" may be used for labeling.

Ms. Farnum last commented that packaging restrictions against products that look like other commercially available foods impacts many of her products.

RESPONSE 16: The department has made initial inquiries with the seed-to-sale tracking system vendor about system changes for tracking manifests. There is no definite information as of the filing of this adoption notice, but the department will notify licensees of any substantive developments.

The department interprets "immediately" to mean that the timing of the reporting to the department should occur upon the discovery of any actual product discrepancy.

As to the vehicle system requirements, the department believes that a security system is a necessary requirement for a vehicle involved in the transport business and personal or employee vehicles should not be used if they cannot meet the minimal security requirements.

The department responds that test batch size issues are outside the scope of this rulemaking and should be directed to the Department of Public Health and Human Services. As for standardized testing procedures, the department agrees that implementing such procedures would be beneficial to the industry, but national standardized instrument methodology is impossible at present because marijuana remains federally illegal. This means that federal regulating bodies like the EPA, FDA, and USDA, which regulate and provide standard methods for all other lab types will not provide guidance or standards for consideration.

The department agrees that "temporary" storage could be clarified and the department has amended the rule upon adoption to mean a 48-hour period.

The department responds to the worker permit questions that (2) and (3) of the rule are clear, and further that a marijuana worker may not use background check results used for other purposes. HB 701 directed the department to conduct all worker background checks and protected criminal justice information generally cannot be used nor relied upon for secondary purposes.

The department understands the questions and concerns regarding labeling and responds that the department is developing labeling and packaging procedural rules and it is the department's goal to have that proposal rules notice finalized in the near future, but it will occur after the adoption of the other pending division rules. As stated in the Cannabis Control Division's December newsletter, " . . . as long as you are compliant with medical rules and laws for packaging and labeling requirements, you will be in compliance until formal guidance is published."

At its December 9, 2021 meeting, the Economic Affairs Interim Committee expressed concerns with the department's proposed allowance of the word "cannabis" in the packaging and labeling rules (New Rule X, and New Rules XII

through XIV). Based on the Economic Affairs Interim Committee's express direction, the department must decline Ms. Farnum's request.

Regarding Ms. Farnum's food packaging question concerning New Rule II(12), the department observes that many other states have adopted similar "copycat" packaging restrictions and the rule restrictions are necessary and clear as a means to avoid potential product confusion - especially for children - between the commercially manufactured food product and the copycat marijuana product. While the department declines to amend the rule, the department is willing to explore the placement of picture samples or other helpful guidance on the requirements through the Cannabis Control Division's communications or webpage.

COMMENT 17: Ms. Stanley commented that New Rules II, III, and IV all state that existing manufacturers, cultivators, and dispensaries can continue to operate under their current licenses in the adult use market but do not specifically state that existing licensees may participate in the wholesale market, only that they continue to operate under their current licenses. Her recommendation would be for the department to clarify those activities each licensee is able to do.

RESPONSE 17: The department believes that the statutes and new rules are clear and they are not meant as restrictions as what a licensee may do under their existing license and under HB 701. While the department declines to make the suggested rule amendments, it does see benefit in developing some educational or informational guidance for licensees that opt to remain in the medical-only market.

COMMENT 18: Ms. Stanley requested amendments to the cultivator license activity description in New Rule III(1) to add more distinction between cultivators and manufacturers.

RESPONSE 18: The department directs Ms. Stanley to Comment and Response No. 39 (below).

COMMENT 19: Ms. Stanley requested the department clarify New Rule IV(1) because " . . . dispensaries are not allowed to function as wholesalers and it conflicts with cultivators and manufacturers. It seemed the intent of HB 701 was to allow cultivators and manufacturers to be the wholesalers, so I would suggest deleting other licensed dispensaries from (1) unless it was the intent that dispensaries are to become wholesalers."

Related to Ms. Stanley's dispensary activity comment, Ms. Cholewa commented her observation that there is an unregulated wholesaling business model that requires the department's attention and there are no administrative rules to address it.

RESPONSE 19: Similar to Response 18, statute permits the activity to which Ms. Stanley refers. Section 16-12-102(1), MCA, provides an adult-use dispensary ". . . . means a licensed premises from which a person licensed by the department may (a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter . . ."

To answer Ms. Cholewa's comment, the department understands and appreciates the comments but they fall outside the scope of this rulemaking and would require independent development and dialogue with the affected stakeholders before such a proposal could be introduced.

COMMENT 20: Ms. Stanley requested the department clarify the paraphernalia sales parameters in New Rule IV(7) because it only appears to address paraphernalia sales to registered cardholders.

RESPONSE 20: The department thanks Ms. Stanley for the observation and the department has amended the rule section as recommended.

COMMENT 21: Ms. Stanley and Ms. Cholewa both commented their belief that New Rule IV(11) requires an amendment to clarify that a dispensary licensee may still sell marijuana and marijuana products to a registered cardholder who does not possess their card but the sale will be made as an adult-use market sale at the applicable tax rate.

RESPONSE 21: The department thanks Ms. Stanley and Ms. Cholewa for the comments and the rule has been amended as suggested.

COMMENT 22: Ms. Stanley commented on New Rule XIII(1)(b)(i) through (iii) and suggested striking the term "serving size" from (i) and (ii) and deleting (ii) entirely since non-ingestible items are not going to be eaten and are not sold in multi-serving packages.

RESPONSE 22: The department thanks Ms. Stanley for the comments and the rule has been amended upon adoption.

COMMENT 23: Ms. Stanley commented to the department's proposed amendments to the definitions in ARM 42.39.102 that there is some internal inconsistency because of the expansion of the application of the definitions to the adult-use market. Ms. Stanley provided some suggested amendments.

RESPONSE 23: The department thanks Ms. Stanley for the comments and some of the ARM 42.39.102 definitions have been amended as suggested.

COMMENT 24: Ms. Cholewa commented her opinion regarding the department's labeling and packaging requirements in New Rules X through XV: (1) that licensees cannot be ready by January 1 with the requirements; (2) labels are expensive and are subject to the same supply chain delays many other products are currently experiencing; (3) there should be a timeline for review once labels have been submitted for approval; (4) the department needs to provide additional clarity regarding minor changes to labels, such as an approved label and packaging for a chocolate chip cookie that also applies to a vanilla cookie; and (5) labels and packaging that meet the requirements under the former rules should be permitted until June 30, 2022.

A handful of others also commented similarly or concurred with (1), (2), (3), and (5) of Ms. Cholewa's comments.

RESPONSE 24: The department understands the questions and concerns regarding labeling, and refers the commenters to the seventh paragraph at the bottom of Response 16.

COMMENT 25: Ms. Cholewa questioned licensee transportation activity and questioned if it is lawful for licensees to transport their own product. Ms. Cholewa also questioned whether transporters will be transporting cash between people. Why would a cultivator buy product from a manufacturer? The department should address this conduct in the rules.

RESPONSE 25: The department directs Ms. Cholewa to Response 6 to answer her first question and adds that any rules changes to limit this ability exceed the scope of this rulemaking and should be independently developed with appropriate legislative and stakeholder input.

As for the transport of money, the department acknowledges this activity is likely but involves private business relationships between licensees, and substantive concerns are speculative at this time.

The department's answer to Ms. Cholewa's final question is that the Act provides for it; whether the legislature intended it or the author of Initiative Measure No. 190. The department acknowledges business activities like this in its implementation of the Act, and will monitor the need to develop and implement rules.

COMMENT 26: Mr. Smith commented on New Rule II(9)(a) that he understands the department's concern regarding the unlicensed practice of medicine, but that it is common for one person (i.e., a dispensary employee) to tell another person (i.e., a customer) their experiences or results using specific products for the treatment of various ailments. Mr. Smith contends this is not medical advice and asks the department to clarify whether this is permissible.

RESPONSE 26: The department believes that New Rule II(9)(a) is clear and does not prohibit licensee employees from anecdotal product discussions.

COMMENT 27: In addition to the fees comments made at the public hearing and in writing, Mr. Speare also provided the following comments:

27.1 - New Rule II(9)(g) and New Rule III(10)(a) use the term "material data safety sheets" but the federal standards under OSHA changed to refer to them as "safety data sheets"; the references should be changed in rule.

27.2 - New Rule II(11)(a) uses the term "class 1 solvents." Mr. Speare recommends adding more specificity to "class 1" and provided text and data from the federal Food and Drug Administration.

27.3 - New Rule III(11) contains a potentially helpful requirement for testing labs to have access to agricultural chemical (i.e., pesticides) logs when applicable (e.g., for customers who have submitted applicable testing samples that was subsequently found to be non-conforming to the required action level for a

pesticide). It would be prudent to ensure that the seed-to-sale tracking system has the capability for cultivators to log pesticides, fertilizers, or other agricultural chemicals as well as make that information viewable to testing labs prior to approving this rule.

27.4 - New Rule V(4)(c)(v) lists requirements for information on transport manifests including vehicle year. METRC currently does not specify entry of year of vehicle when entering information for transfer manifests. Mr. Speare recommends changing this requirement to include state driver's license number.

27.5 - New Rule VII(2) - Mr. Speare comments and opines that the existing marijuana industry - and marijuana testing laboratories - should be granted the same moratorium from new laboratories - until July 1, 2023 - that HB 701 clearly granted to cultivators, manufacturers, and dispensaries. Mr. Speare attributes the lack of provision for marijuana testing laboratories in HB 701 to a drafting error in the legislation.

27.6 - New Rule VIII(1) and (3) - Testing labs were not mentioned in HB 701 for the requirement for storage facilities. If testing labs will have this requirement, there should be more clarity as to how that is applied. Also, it is Mr. Speare's understanding this requirement has been under review by the DPHHS as unnecessary given the bonded status of labs and usual practice regarding laboratory samples.

27.7 - New Rules XI, XII, XIII, and XIV (Labeling Requirements) - "Total potential psychoactive THC" (TPPT) is required on product labels [New Rules XI (2)(a), and XIV (1)(c)(i)(A)(I) and New Rules XII(2), XIII(2), XIV(2)]. TPPT is a new definition (ARM 42.39.102(53)). It is understandable to include this distinction for the sake of customer understanding and safety, but it creates internal confusion within the proposed rules as well as with DPHHS' rules which already use "Total THC" for the same meaning. Mr. Speare's recommendation is to replace all uses of TPPT with "Total THC" and remove the definition in ARM 42.39.102(53).

Alternatively, if the department decides to keep the usage of TPPT, Mr. Speare recommends allowing the use of "Total THC" on applicable product labels, adding language to the effect that "Total THC" and "Total potential psychoactive THC" are equivalent/synonymous.

RESPONSE 27: The department thanks Mr. Speare for his time and the detailed comments. The department responds as follows (utilizing the same numbering convention in Comment 27):

27.1 - The department has amended the rule to correct the safety data sheet references.

27.2 - The department has amended the rule to include the expanded solvent reference.

27.3 - The department understands the nature of the comment that this information could be useful to chemists to determine if any anomalies in lab data can be investigated by what is found in a pesticide log. However, testing labs are capable of determining pesticides results without the use of a log as well. Based on this conclusion, the department declines to make additional amendments at this time.

27.4 - The department has amended the rule to include the additional transport manifest information and to remove vehicle "year."

27.5 - The department directs Mr. Speare to Response No. 37 which constitutes the department's response to all marijuana testing laboratory moratorium comments.

27.6 - The department declines to remove any requirement and has amended the rule to provide improved clarity. While the department cannot respond to DPHHS' past practice or to the accuracy of Mr. Speare's communications with DPHHS, the department did receive comment from DPHHS that the bonding requirements for marijuana testing laboratories which were in rule, had not been omitted from New Rule VII. Based on the comments received, the department has included the bonding requirements as New Rule VII(6) and (7).

27.7 - The department disagrees that any potential confusion outweighs the benefits of correctly labeling the product. TPPT is only for labeling purposes and Total THC is only for the lab certificate of analysis (CofA). The intent with this rule is to prevent labeling products with misleading THC results, which is an issue in the industry. Total THC is not in the department's rule and TPPT is not in DPHHS lab rules. Because the department's rules are centered on heated/unheated products applicable to the customers upon ingestion, application, this designation is important on labels. Based on this discussion, the definition in ARM 42.39.102(53) and any reference to TPPT will remain as proposed, but the department is willing to revisit the issue with stakeholders and DPHHS in the future.

As an extension of the analysis, the department has corrected the TPPT equation in the definition.

COMMENT 28: Ms. Barney asked on New Rule X regarding labeling, whether a booklet may be used, like a peel away wrap label that can be found like on an over-the-counter medicine bottle where you peel it and there is more information on the back--is that allowable?

RESPONSE 28: The department responds that New Rule X is clear and agrees that a booklet can be used in labeling.

COMMENT 29: Ms. Barney asked about the unique identification number required in New Rule X(3)(c) and whether the department could consider this to be the "mother package" since the package number and all of the historical data is in the system?

RESPONSE 29: The department responds that there is no singular "mother package" as that designation changes from the source package to the tested package and on through to individual end packages. For labeling compliance under the rule, the unique identification number to be used is the number that corresponds to the current package.

COMMENT 30: In addition to the comments made at the public hearing by Mr. Kosted and the comments of Mr. Brost regarding fees, Stillwater Laboratories, Inc. (Brost or Stillwater) also provided extensive written comments as follows:

30.1 - HB701, Section 109 includes specific warning language to be included in labels. We propose additions to New Rule X(3).

30.2 - HB701, Section 5(8)(b)(iv) includes information regarding dosages that is not in MAR Notice No. 42-1033 and should be added.

30.3 - For clarity, include a certificate number, lab test date, and lab name and ID for product traceability in New Rule X(3).

30.4 - Revise New Rule X(3)(a) regarding the common name description from "flower, inhaled extract, edible or drinkable, topical, transdermal patch" to the more commonly used "strain name, concentrate type, edible name, topical name, etc."

30.5 - Revise New Rule X(3)(a)(i) to include the product type from the title of New Rules XI through XIV (marijuana flower, ingestible marijuana concentrate, non-ingestible marijuana concentrate, ingestible marijuana infused product, noningestible marijuana infused product).

30.6 - Revise New Rule X(3)(e)(iv) for the servings label language from the unit of production (cf. "cookies" to "servings") on the rationale that a serving may be more (or less) than a unit of production.

30.7 - Recommends the department include a warning for product handling of perishables.

30.8 - Recommends the department require boldface type in marijuana products warnings to keep out of the reach of children and pets. The rationale being that this would be consistent with prior DPHHS direction.

30.9 - Recommends the department strike New Rule X(7) on the basis that reduction of the font size will greatly reduce readability of a product label but will not necessarily result in a significantly smaller label size.

30.10 - In New Rule VIII, it may be interpreted that transportation of marijuana by testing laboratories requires a storage endorsement if lay-overs are included in a lab-to-lab run. Stillwater opines that this requirement does not apply to marijuana testing laboratories under the Act, but in the event the department disagrees, clarification of conditions is necessary.

30.11 - New Rule X(3)(h) - Stillwater advocates for the department to change the marijuana symbol from a color-based symbol to black and white.

30.12 - Stillwater provided the department with a mock-up table of specifications and a sample label in the font sizes required under the Act and the department's rules. The department assumes the information was provided to assist the department in its final determination of labeling requirements because no specific commentary was provided.

30.13 - New Rule VII(2) - Stillwater comments and opines that the existing marijuana industry - and marijuana testing laboratories - should be granted the same moratorium from new laboratories - until July 1, 2023 - that HB 701 clearly granted to cultivators, manufacturers, and dispensaries.

RESPONSE 30: The department thanks Mr. Brost, Stillwater, and its employees for their time and the detailed comments. The department responds as follows (utilizing the same numbering convention in Comment 30):

30.1 - Because these required warnings are provided in HB 701/the Act, as codified, the department declines to add the content into rule, which could be viewed

as being unnecessarily redundant in contravention of 2-4-305(2), MCA, of the Montana Administrative Procedure Act (MAPA).

30.2 - See Response 30.1, generally, regarding MAPA.

30.3 - The department contends that while the information suggestion may be useful for marijuana testing laboratories, it is not as useful for consumers. Based on this justification, the department declines to make the requested change.

30.4 - Based on the comments, the department has amended the rule to include the additional information.

30.5 - Based on the comments, the department has amended the rule to include the additional information.

30.6 - Based on the comments, the department has amended the rule as suggested.

30.7 - The department declines to make the suggested revision because a variation of the proposed language is in New Rule II(14).

30.8 - The department declines to make the suggested revision because all required warnings are important and boldface type does not create a level of import for this warning over any other.

30.9 - The department respectfully declines to make the suggested revision at this time, but acknowledges product labeling revisions are likely for inclusion in future rulemaking.

30.10 - The department appreciates the comments, but it falls within the department's rulemaking authority to implement requirements to reasonably administer the Act. Given that the state of Montana is large, geographically, the department affirms the necessity that marijuana testing laboratories shall obtain a storage facility endorsement when a laboratory transports marijuana or marijuana products and the transportation includes overnight storage of the products.

Based on these comments, the department has amended New Rule VIII(1) to clarify the conditions for the imposition of the requirement and has also amended (2) to provide the maximum amount of time for the use of a temporary storage facility.

30.11 - The department received comment from the co-designer of the International Intoxicating Cannabis Product Symbol (IICPS), Dr. David Nathan, which the department is using. According to Dr. Nathan, who commented to this rulemaking, IICPS is the only cannabis product symbol to conform to existing consensus standards for warning signs, as defined by ISO 3864 and ANSI Z535. The consensus standards organization, ASTM, is entering its second and final round of balloting on approval of the IICPS through ASTM WK75247, *Specification for an International Symbol for Identifying Consumer Products Containing Intoxicating Cannabinoids*. Passage will make the IICPS the only cannabis product symbol in the world to be designated as a consensus standard in its own right. For the foregoing reasons, the department respectfully declines to make the suggested revision.

30.12 - Because there was no specific request or comment relative to the label specifications and mockup, no response from the department is necessary.

30.13 - The department directs Stillwater to Response No. 37 which constitutes the department's response to all marijuana testing laboratory moratorium comments.

COMMENT 31: The department received several comments to the proposed rulemaking which, in practicality, are comments to industry restrictions that are present in the Act and are outside the scope of rulemaking. Examples of the objections are that: (a) dispensaries must have a single, secured entrance for patrons; (b) licensees shall bear the responsibility and cost for procuring unique identification tracking tags to facilitate the tracking of marijuana and marijuana products; and (c) a person under 21 years of age is not permitted inside a marijuana business unless the person is a registered cardholder.

RESPONSE 31: The department understands the challenges that licensees face in a new or more-strictly regulated industry and directs the commenters to the following portions of the Montana Code Annotated as representative of the requirements examples to which they commented: for item (a) see 16-12-207(9), MCA; for item (b) see 16-12-105(1)(c), MCA; for item (c) see 16-12-207(12), MCA.

COMMENT 32: Pepper Peterson, CEO of the Montana Cannabis Guild (Guild), provided the following written comments:

32.1 - Transporter fees are appropriate at $10,000 as this keeps a reasonable floor in place to ensure delivery companies are reputable and capable.

32.2 - Fees to conduct background checks are too high and can be done for much cheaper. Further, it is the opinion of the Guild that HB 701 requires only licensees to submit to fingerprint background checks while Marijuana Worker Permit holders should be able to use the cheaper and easier non-fingerprint required checks. The intent of the legislature was never to put the onerous fingerprint requirement on workers, rather only licensees.

32.3 - Mr. Peterson questions the need for the department's change of location fee.

32.4 - Mr. Peterson commented to the trade secret concerns raised by Mr. Young and Ms. Barney in Comment No. 7.

32.5 - Mr. Peterson commented that New Rule IV(7) says we may not serve registered cardholders under 18. What about those cardholders who are under 18? There are some and their guardians generally pick their product up for them--is this considered serving?

32.6 - Mr. Peterson commented his opinion that there should be an insurance and bonding requirement for transporters; there should be a requirement for onboard video cameras for transport vehicles; and a requirement for GPS tracking for all delivery vehicles.

RESPONSE 32: The department responds as follows (utilizing the same numbering convention in Comment 32):

32.1 - Mr. Peterson's comments require no response.

32.2 - The Department of Justice charges $50 for a fingerprint background check and $30 for name based – so the department contends that a flat $30 is reasonable. As to the requirement for workers, workers only have to submit their background check once, and $30 is not onerous.

32.3 - The department directs Mr. Peterson to the fourth paragraph of Response No. 2.

32.4 - The department directs Mr. Peterson to Response No. 7.

32.5 - Mr. Peterson reads the rule incorrectly. This provision says licensees cannot sell paraphernalia to those under 18. The department also directs Mr. Peterson to Comment and Response No. 20 for additional information.

32.6 - The department responds that minimum insurance is already required by state law. As for the requirements for onboard video cameras and GPS tracking for transporters, the department declines these requirements as they would likely be determined to be unduly burdensome to these licenses.

COMMENT 33: The department received a written comment from Jeff Schmidt, OneLife Organics, that expresses his concerns after the moratorium expires that new cultivators need to start at the bottom of the canopy tiers and work their way up like existing cultivators have had to do. Mr. Schmidt believes the regulations and these new rules need to protect the local businesses from larger companies that can buy a 100,000 square foot building and immediately enjoy the benefits of the industry's hard work.

RESPONSE 33: Unfortunately, Mr. Schmidt misunderstands the post-July 2023 cultivator licensing restrictions of HB 701. Section 4(1)(f), HB 701, codified as 16-12-223(1)(f), MCA, specifically provides that "a marijuana business that has not been issued a license before July 1, 2023, must be initially licensed at a tier 2 canopy license or lower."

COMMENT 34: The State Laboratory believes language should be added to the proposed rules that addresses the $1,000,000 insurance and $25,000 bonding requirements for testing laboratories. These requirements were formally covered in ARM 37.107.302(21) and (22) promulgated by the State Laboratory. However, with passage of HB 701, it appears rulemaking relating to insurance and bonding requirements more appropriately lies with the Department of Revenue. See 16-12-112(1)(a), MCA (authority to adopt rules governing the manner in which applications for testing laboratory licenses will be considered), and 16-12-206(4)(b)(iii), MCA (qualification for licensure requires testing laboratories to meet insurance and bond requirements established by rule).

In the course of evaluating a testing laboratory applicant's qualification for endorsement, the State Laboratory intends to include in its rules criteria to ensure insurance and bond requirements established by DOR are met.

RESPONSE 34: The department agrees and based on the comments has amended New Rule VII to add (6) and (7) upon adoption.

COMMENT 35: As alluded to in Response No. 30.11, the department received written comment from Dr. David L. Nathan, M.D., DFAPA, of Doctors for Cannabis Regulation, who lauded the department's efforts to adopt the IICPS product symbol, which is the only cannabis product symbol to conform to existing consensus standards for warning signs, as defined by ISO 3864 and ANSI Z535.

RESPONSE 35: The department appreciates Dr. Nathan's expertise and thanks him for the helpful commentary and support.

COMMENT 36: The department received the following commentary from two individuals who are involved in, or advocate for, Substance Abuse and Mental Health Services Administration (SAMHSA) evidence-based recommendations on marijuana prevention strategies:

36.1 - New Rule II(15) - banning flavored marijuana products is one public health strategy to reduce youth use.

36.2 - New Rule V(4)(b) - states transporters may be delivering to a registered cardholder's address while (12) says they may NOT transport directly to consumers. Please clarify.

36.3 - There is much in New Rule V describing all the protocols in place for delivery to licensed premises, but not for delivery to a registered cardholder.

36.4 - How is the state of Montana ensuring that deliveries are only received by the registered cardholder and not by underage youth who are not cardholders?

36.5 - New Rule X(3) - The required graphic indicating that the package contains marijuana is only .33". This is barely visible/legible, but may be the only indication a child has that a product is not candy or food.

36.6 - New Rule X(4) – Excellent warnings!

36.7 - New Rule X - could be strengthened to include: (i) depicts a person under age 21; (ii) portrays objects, images, human, or cartoon figures, or any other animate creature including, without limitation, an insect, toy, fruit, vehicle, or robot; (iii) contains text referring to a cartoon, or any other animate creature including, without limitation, an insect, toy, fruit, vehicle or robot; (iv) contains any images, characters, or phrases that closely resemble images, characters, or phrases commonly used to advertise to children.

36.8 - Commentary included statements that represent a differing approach about public policy recommendations that are outside the scope of the department's rulemaking authority.

RESPONSE 36: The department thanks the commenters and responds as follows (utilizing the same numbering convention in Comment 36):

36.1 - The department declines to make these suggested changes because they are too broad. Flavor is added for reasons other than for making the product more appealing to children.

36.2 - Cardholders and consumers are different. The department directs the commenters to the definitions provide in the Act and in ARM 42.39.102.

36.3 - Transporters may deliver to registered cardholders or between licensed premises.

36.4 - The department has added New Rule IV(16) and amended New Rule V(4)(b), which will improve the sale and transport concerns expressed.

36.5 - The department directs the commenters to Response Nos. 30.11 and 34, which the department believes adequately address the comments.

36.6 - The department appreciates the comments and support.

36.7 - The department appreciates the comments and contends these are covered by our current language, depending on how they are depicted; except for

"fruit," but fruit does not primarily appeal to children. The department will be reviewing all packages for this content.

36.8 - The department is responsible under the Act for its implementation. While the department's rules do impact public policy, it is not the role of the department to establish public policy goals; that is an act of the legislature.

COMMENT 37: In addition to the comments received from Mr. Kosted at the public hearing and those from Mr. Speare and Mr. Brost described in Comments 27.5 and 30.13, the department also received written comments from Andre Umansky at Fidelity Diagnostics Laboratory and other written comments objecting to the "start date" for the department's acceptance of new marijuana testing laboratory applications, which is reflected in New Rule VII(2). The department also received feedback from the Economic Affairs Interim Committee during its November 17, 2021 meeting.

As alluded to in Comments 27.5 and 30.13, the commenters request that the marijuana testing laboratory portion of the industry be granted the same moratorium - until July 1, 2023 - as existing marijuana cultivators, dispensaries, and manufacturers. Many of the commenters attribute the lack of a specific moratorium provision for marijuana testing laboratories to a drafting error in HB 701.

RESPONSE 37: Imposing a moratorium on marijuana testing laboratories via administrative rule violates the applicable statutes' plain language and 2-4-305, MCA, of the Montana Administrative Procedure Act (MAPA). The licensing moratorium is derived from 16-12-201, MCA, which provides, in relevant part:

> 16-12-201. Licensing of cultivators, manufacturers, and dispensaries.
> (1)(a) Between January 1, 2022 and June 30, 2023, the department may only accept applications from and issue licenses to former medical marijuana licensees that were licensed by or had an application pending with the department of public health and human services on November 3, 2020 and are in good standing with the department and any applicable local regulations or ordinances as of the [January 1, 2022].
> (b) *The department shall begin accepting applications from and issuing licenses to cultivate, manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana licensees under subsection (1)(a) on or after July 1, 2023.*" (emphasis added).

Former medical marijuana licensees are defined to mean "a person that was licensed by or had an application for licensure pending with the department of public health and human services to provide marijuana to individuals with debilitating medical conditions on November 3, 2020." 16-12-102(14), MCA. Marijuana testing laboratories are clearly not included in this definition and, therefore, 16-12-201, MCA, does not impose a licensing moratorium on marijuana testing laboratories.

The limitation on only accepting applications from, and issuing licenses to former medical marijuana licensees, is specific to cultivators, manufacturers, and dispensaries, evidenced both by the definition of former medical marijuana licensee and by the title of 16-12-201, MCA. Further, the language in (1)(b) expressly lifts the

moratorium on cultivators, manufacturers, and dispensaries on July 1, 2023, meaning it was only applied to these license types in the first instance.

And assuming that the department was inclined to adopt an administrative rule which would grant the licensed marijuana testing laboratory industry a moratorium from competition, that rule would likely violate 2-4-305(3), MCA, which provides:". . . [e]ach proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement." Without a specific implementing statute, the department cannot purport that it is in compliance with MAPA and legislative intent absent a foundational component for such a rule.

Should the legislature express that the marijuana testing laboratory moratorium omission was an error, the department still cannot effectuate that change through this rulemaking because the department lacks implementing authority any amendments would exceed the scope of the rulemaking, as provided in 2-4-305(6), MCA, and the department received specific public comment during this rulemaking that marijuana testing laboratories should not receive any moratorium through rule.

Lastly, the department notes for the record that it received approximately 40 identical "template" comments on this issue from persons who are, or appear to be, related to Stillwater Laboratories - all of which arrived after the close of the comment period at 5:00 p.m. on November 29, 2021. Notwithstanding the untimely receipt of the comments, the department reviewed the comments in the ordinary course of this rulemaking and concluded no new data or arguments were present in the comments from those described by Mr. Kosted at the public hearing, in Comments 27.5 and 30.13 regarding Messrs. Speare and Brost, or from Mr. Umansky, and these comments do not impact the department's responses.

COMMENT 38: At its December 9, 2021 meeting, the Economic Affairs Interim Committee (committee) objected to the fee structure for manufacturer licensees in New Rule I in that it does not adequately capture licensing fees for manufacturers that produce 15 pounds or more of concentrate per month, and requested the amendment to New Rule I since 16-12-204, MCA, allows the department to create additional fee levels, as necessary, for marijuana manufacturers.

RESPONSE 38: Based on the committee's request, and to resolve this objection, the department has amended New Rule I to include new (1)(f)(iv).

COMMENT 39: At its December 9, 2021 meeting, the Economic Affairs Interim Committee objected to the department's interpretation of permissible license activity in New Rule III which the committee purports will permit cultivator licensees to become brokers of marijuana. The committee expressed that while it does not object to cultivators selling marijuana seeds or marijuana plants to other cultivator licensees, it was not the legislative intent to allow cultivators to sell marijuana flower to other licensees.

RESPONSE 39: Based on the committee's request, and to resolve this objection, the department has amended New Rule III(1) to clarify the restriction.

RESPONSE 40: At its December 9, 2021 meeting, the Economic Affairs Interim Committee objected to the department's proposed reinstatement, based on public comment, of a cultivator licensee's ability to "tier up" its outdoor cultivation. Section 16-12-223(6) is silent on the issue, but the committee stated that it was legislative intent to prohibit outdoor cultivators from tiering up.

RESPONSE 40: Based on the committee's request, and to resolve this objection, the department has retained the restriction in New Rule III(5).

COMMENT 41: At its December 9, 2021 meeting, the Economic Affairs Interim Committee objected the department's interpretation of the restriction for cultivation activity for New Rule VI, Combined Licenses.

RESPONSE 41: Based on the committee's request, and to resolve this objection, the department has amended New Rule VI(3) to clarify this license type is also subject to the cultivator license activity provided in 16-12-223, MCA.

7. The effective date of the department's adoptions and amendments is January 1, 2022.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.10.501, 42.10.505, and 42.10.506 pertaining to debtor appeals of department collections	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 22, 2021, the Department of Revenue published MAR Notice No. 42-1039 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1399 of the 2021 Montana Administrative Register, Issue Number 20.

2. On November 18, 2021, the department held a public hearing to consider the proposed amendment. No interested persons appeared at the hearing. No oral or written comments were received.

3. The department has amended the above-described rules as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart
David R. Stewart
Authorized Signor
for the Department of Revenue

Certified to the Secretary of State December 14, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XIII pertaining to the implementation of compliance and enforcement requirements of the Montana Marijuana Regulation and Taxation Act and local-option marijuana excise taxation	)))))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 5, 2021, the Department of Revenue (department) published MAR Notice No. 42-1040 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1513 of the 2021 Montana Administrative Register, Issue Number 21.

2. On November 30, 2021, the department held a public hearing to consider the proposed adoption. There were no commenters present to provide testimony or commentary in support of the rulemaking. The following commenters appeared and provided oral testimony in opposition to the proposed rulemaking: Nathan Kosted, Stillwater Laboratories; Kate Cholewa, Montana Cannabis Industry Association (MTCIA); Evan Kajander, Apogee Gardens; and Kyle Babcock.

The department received written comments from interested persons in support of the proposed rules and also received written comments submitted by interested persons in opposition.

3. Based on comments provided and opposition testimony at the public hearing, which is referred to in Comment and Response No. 2, the department has withdrawn New Rule I from this rulemaking in its entirety.

4. The department has adopted New Rule II (42.39.122), New Rule IV (42.39.503), New Rule V (42.39.504), New Rule VI (42.39.505), New Rule VIII (42.39.507), New Rule IX (42.39.508), New Rule X (42.39.501), New Rule XI (42.39.502), and New Rule XIII (42.31.1101) as proposed.

5. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE III (42.39.121) LICENSED PREMISES – SECURITY REQUIREMENTS (1) through (3) remain as proposed.

(4) A licensed premises must have a video monitoring system with cameras that:

(a) remains as proposed.

(b) record continuously twenty-four hours per day, or on a motion-sensor system, at a minimum of ten frames per second;

(c) and (d) remain as proposed.

(5) The video monitoring system described in (4) must also:

~~(a) include a recording storage device secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect against employee tampering or criminal theft;~~

~~(b)~~ (a) keep all recordings for a minimum of ~~90~~ 60 days; and

(c) remains as proposed but is renumbered (b).

(6) and (7) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-112, 16-12-202, 16-12-207, 16-12-222, MCA

NEW RULE VII (42.39.506) SUSPENSION OR REVOCATION OF WORKER PERMITS (1) remains as proposed.

~~(2) The following are grounds for suspension or revocation of a worker permit:~~

~~(a) conviction, guilty plea, or plea of no contest to a criminal offense within three years of the application or renewal;~~

~~(b) conviction, guilty plea, or plea of no contest to a citation for selling or dispensing alcohol or tobacco products to a minor;~~

~~(c) conviction, guilty plea, or plea of no contest to violating a marijuana law of any other state; or~~

~~(d) violation of any provision of the marijuana laws.~~

(3) remains as proposed but is renumbered (2).

AUTH: 16-12-112, MCA
IMP: 16-12-109, MCA

NEW RULE XII (42.39.110) GENERAL LICENSEE REQUIREMENTS

(1) through (5) remain as proposed.

(6) A licensee must maintain and make available for department inspection at all licensed premises the following documentation or information in a single binder, file, or other organized and readily accessible format:

(a) through (d) remain as proposed.

(e) for marijuana manufacturer licensees, the written standard operating procedures required by [MAR Notice No. 42-1033, NEW RULE II(16)]; ~~and~~

(f) for marijuana cultivator licensees, the written standard operating procedures required by [MAR Notice No. 42-1033, NEW RULE III(8)]~~.~~; and

(g) for marijuana dispensary licensees, a written standard operating procedure for the destruction of returned marijuana or marijuana products.

AUTH: 16-12-112, MCA
IMP: 16-12-112, MCA

6. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Kosted made several brief comments that are aggregated in this Comment 1. Stillwater Laboratories reads the rules with delight, especially the portions relative to licensee and premises security, and marijuana workers. Mr. Kosted believes there is enough subjectivity in New Rule VII that the department will have a sufficient amount of latitude for compliance matters. Mr. Kosted commented that he is unsure, yet, of how these rules will work for marijuana testing laboratories. How will these rules work with the rules from DPHHS? Mr. Kosted opines that maybe the more appropriate regulatory agency for them would be DPHHS.

RESPONSE 1: The department thanks Mr. Kosted for acknowledgement of the regulatory effort drafted into the department's rules. As for his comments about marijuana testing laboratories having to comply with this department's rules in addition to those of DPHHS, Section 50, HB 701 is clear as to the respective agency's responsibilities and the necessary collaborative regulatory effort. The department and DPHHS do have a memorandum of understanding that will guide both agencies in our respective work with marijuana testing laboratories.

COMMENT 2: Ms. Cholewa commented that the point of sale (POS) requirement in New Rule I is unnecessary as many licensees use METRC as their POS system. Ms. Cholewa reads the statute requiring a point of sale system as tied to the semi-cashless requirement and asks why POS would be required without the semi-cashless component. Ms. Cholewa asks for the rule to be stricken from the rules package.

Ms. Emily Estkowski, owner of Kanopli, provided similar commentary to Ms. Cholewa, but a primary concern is that third-party POS software has known application programming interface (API) issues with METRC, which has been communicated to licensees, like Ms. Estkowski, by the department's METRC system vendor representatives.

RESPONSE 2: Based on the commentary provided and upon further consideration, the department has withdrawn New Rule I in its entirety from MAR Notice No. 42-1040.

COMMENT 3: Mr. Kajander commented to New Rule III and asks the department to reconsider the camera requirements in New Rule III(4) and (5). The basis for the request relates to the recording technology that is used in the systems. Most systems are cloud-based and switch on only when motion is detected because the file size relative to the minimum resolution requirements makes local storage of surveillance video impracticable and can be downloaded and transmitted more efficiently should either the licensee or the department request it.

RESPONSE 3: The department thanks Mr. Kajander for the observation and the department has amended the rule sections as recommended.

COMMENT 4: Similarly to Mr. Kajander's comments, Mr. Babcock commented that the amount of storage space necessary for the required number of cameras for the proposed 90-day period would equate to a massive amount of data - he opines 54 terabytes. Mr. Babcock asks the department to shorten the amount of storage time.

RESPONSE 4: The department thanks Mr. Babcock for the information and the department has amended the video storage requirement down to 60 days.

COMMENT 5: The department received several comments on New Rule VII(2), both in writing and at the public hearing, that could be summarized as general objection to the rule's grounds for the suspension or revocation of worker permits. Many commenters contend that the department misconstrued this portion of the legislative intent of House Bill 701 (HB 701).

The department also received direct feedback from the legislature, through its Revenue Interim Committee and Economic Affairs Interim Committee meetings, held on November 9 and November 17, 2021, respectively. Both committees voiced that the department would not be fulfilling legislative intent by adopting such stringent criteria for industry workers.

RESPONSE 5: The department thanks all commenters and the interim legislative committees for their comments. Based on the commentary and testimony received, the department has amended New Rule VII upon adoption to remove (2).

7. The effective date of the department's rule adoptions is January 1, 2022.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State December 14, 2021

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.4.803 and 42.4.804 pertaining to innovative educational program donations to school districts and student scholarship organizations (SSO)	)))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 5, 2021, the Department of Revenue (department) published MAR Notice No. 42-1041 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1530 of the 2021 Montana Administrative Register, Issue Number 21.

2. On November 29, 2021, the department held a public hearing to consider the proposed adoption and amendment. There were no commenters present to provide testimony or commentary for the rulemaking. The department received written comments from the following interested persons: Ross Izard, ACE Scholarships; and Liz Heaney.

3. The department has adopted New Rule I (42.4.801) as proposed.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.4.803 SCHOOL DISTRICT AND STUDENT SCHOLARSHIP ORGANIZATION (SSO) REQUIREMENTS AND PREAPPROVAL PROCESS

(1) and (2) remain as proposed.

(3) With respect to the aggregate limit of tax credits allowed for a year, the priority of donations is based upon the time and date stamp issued by the department's registration system when a school district or SSO completes registration of the donation. Donations made in excess of the aggregate limits and credit cap, which is the amount of the credit provided under 15-30-3110 and 15-30-3111, MCA, will not be eligible for the tax credit.

(4) remains as proposed.

AUTH: 15-1-201, 15-30-3114, MCA
IMP: 15-30-3102, 15-30-3103, 15-30-3105, 15-30-3106, MCA

42.4.804 CREDIT LIMITATIONS AND CLAIMS (1) A taxpayer may claim a credit for contributions made in cash to a school district provided for in 20-9-901, MCA, and/or a student scholarship organization (SSO), provided for in 15-30-3110,

MCA. ~~A contribution made in~~ For the purpose of this rule, cash ~~means~~ includes:

(a) through (d) remain as proposed;

(e) bank draft; ~~or~~

(f) an electronic bank account transfer (e.g., wire transfer, ACH draft);

(g) a credit card transaction (less any transaction surcharges or fees); or

(f) remains as proposed but is renumbered (h).

(2) through (4) remain as proposed.

AUTH: 15-1-201, 15-30-3114, MCA
IMP: 15-30-3101, 15-30-3111, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Izard commented that ARM 42.4.803(3) references a "date stamp" with regard to how donations are prioritized for receipt of credits. ACE believes that credit caps may be met in a matter of hours or even minutes. ACE recommends this text be changed to "time and date stamp" to allow for granularity of analysis and to avoid misunderstandings.

RESPONSE 1: The department agrees and based on the comment has amended ARM 42.4.803(3) upon adoption.

COMMENT 2: Mr. Izard commented that the various forms of cash donations that scholarship-granting organizations may accept in ARM 42.4.804 does not include credit cards. ACE requests adding credit cards, potentially with a stipulation that any associated fee may be surcharged to the cardholder (but will not be eligible for the credit).

RESPONSE 2: While HB 279's amendment to 15-30-3102(2), MCA, defines "donation" as a gift of cash, the department's understanding of the legislative intent of limiting donations to cash was to prevent a donation of property other than cash with a cost basis lower than the value. Based on the comment, the department has added (1)(g) to include credit card transactions in the list specifying that any credit card transaction surcharge or fee imposed by a SSO or school district is ineligible for the credit.

COMMENT 3: Mr. Izard commented that ARM 42.4.804(1)(e) mentions bank drafts as an acceptable form of donation, but it does not stipulate precisely how that term is defined. Mr. Izard would like to ensure that wire transfers, ACH, and other electronic transfers are included under this item in order to avoid confusion.

RESPONSE 3: The department appreciates the comments and agrees that wire transfers, ACH, and electronic transfers may meet the criteria, provided the electronic transfer does not have a non-cash source for the funds. Based on the comment, the department has amended the rule with a new (1)(f) for added clarity.

COMMENT 4: Ms. Heaney commented that she lived in Arizona where a similar program exists. It is a successful program and she enjoys seeing this program in Montana.

RESPONSE 4: The department thanks Ms. Heaney for her comments.

6. The effective date of the department's adoptions and amendments is January 1, 2022.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State December 14, 2021

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.39.106, 42.39.107, 42.39.117, 42.39.118, 42.39.202, 42.39.203, 42.39.310, 42.39.311, 42.39.312 and the repeal of ARM 42.39.103, 42.39.108, 42.39.111, 42.39.113, 42.39.114, 42.39.119, 42.39.201, 42.39.301, 42.39.302, 42.39.305, 42.39.306, and 42.39.313 pertaining to medical marijuana program rules and the implementation of the Montana Marijuana Regulation and Taxation Act	)))))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 5, 2021, the Department of Revenue (department) published MAR Notice No. 42-1042 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1534 of the 2021 Montana Administrative Register, Issue Number 21.

2. On November 30, 2021, the department held a public hearing to consider the proposed amendment and repeal. There were no commenters present to provide testimony or commentary in support of the rulemaking. The following commenters appeared and provided oral testimony in opposition to the proposed rulemaking: Joanna Barney, Sacred Sun Farms; Pepper Petersen, Montana Cannabis Guild; and Evan Kajander, Apogee Gardens.

The department received written comments from interested persons in support of the proposed rules and also received written comments submitted by interested persons in opposition.

3. The department has amended ARM 42.39.106, 42.39.107, 42.39.118, 42.39.203, 42.39.312 and repealed ARM 42.39.103, 42.39.108, 42.39.111, 42.39.113, 42.39.114, 42.39.119, 42.39.201, 42.39.301, 42.39.302, 42.39.305, 42.39.306, and 42.39.313 as proposed.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

<u>42.39.117 DENIAL OF REGISTRY IDENTIFICATION CARD APPLICATION OR REVOCATION OF REGISTRY IDENTIFICATION CARD</u> (1) The department,

after written notice to the applicant or registered cardholder, may deny or revoke an application or registry identification card if:

(a) through (i) remain as proposed.

(j) the cardholder violates the daily or monthly ~~possession or~~ purchase limitations contained in 16-12-515, MCA; or

(k) and (2) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-108, 16-12-112, 16-12-203, 16-12-503, 16-12-515, 45-9-203, 61-11-101, MCA

42.39.202 SEED-TO-SALE TRACKING SYSTEM USER REQUIREMENTS

(1) through (10) remain as proposed.

(11) If a licensee loses access to the seed-to-sale tracking system due to a power outage or other connectivity issue, the licensee must keep and maintain comprehensive records detailing all seed-to-sale inventory activities that were conducted during the loss of access.

(12) through (14) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-105, 16-12-112, 16-12-203, MCA

42.39.310 WASTE MANAGEMENT (1) through (7) remain as proposed.

(8) A licensee must maintain accurate and comprehensive records regarding waste material in the seed-to-sale tracking system that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana to include:

(a) and (b) remain as proposed.

(c) date disposed; ~~and~~

(d) video evidence of disposal to be retained for 30 days; and

(e) reason for the disposal.

(9) remains as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-103, 16-12-105, 16-12-112, 16-12-203, 16-12-210, MCA

42.39.311 REPORTING REQUIREMENTS (1) and (2) remain as proposed.

(3) A licensee must notify the department within ten days of any changes in the following:

(a) remains as proposed.

(b) its standard operating hours;

(c) through (6) remain as proposed.

AUTH: 16-12-112, 16-12-533, MCA
IMP: 16-12-112, 16-12-202, 16-12-203, 16-12-503, 16-12-508, 16-12-533, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Ms. Barney asked the department to clarify in ARM 42.39.202(11) what constitutes a loss of access to the seed-to-sale tracking system and whether that is specific to dispensaries.

RESPONSE 1: The department understands Ms. Barney's question and responds to the first part that loss of access is not meant to be loss of access due to a license suspension, and the department has amended the rule to clarify. As to the second part, loss of access applies to all licensees.

COMMENT 2: Ms. Barney observes in her review of ARM 42.39.203 for tracking and reconciliation that inventory reconciliation is not a feature in METRC. Is this being built? Also does it apply to all license types?

RESPONSE 2: Inventory reconciliation in (8) has been in rule since 2018 and is not a new requirement. It is a daily reconciliation of all on-premises and in-transit inventory. If Ms. Barney is still unclear, the department directs her to call the Cannabis Control Division for additional assistance.

COMMENT 3: Ms. Barney asked the department to clarify whether there is still a 72-hour hold for waste marijuana.

RESPONSE 3: The department responds "yes," and directs Ms. Barney to current ARM 42.39.310(8), which was renumbered to (9) for this rulemaking.

COMMENT 4: Generally, Mr. Petersen commented his belief that ARM 42.39.117(1)(j) is confusing, although his concerns are directed at registered cardholder interactions with law enforcement, which is not within the authority of the department.

RESPONSE 4: The substance of ARM 42.39.117(1)(j) is in statute; and while the department declines to remove this provision entirely, because its removal would not change the requirement under the law, the rule has been amended to add "monthly" and removes "possession" to clarify the purchase limits.

COMMENT 5: Mr. Petersen commented to the reporting requirements for business hours in ARM 42.39.311(3)(b) and opined about the increased level of bureaucracy this creates.

Mr. Kajander had comments related to the same rule provision and said he had no problem with stating operating hours but asks how they will report changes – like adopting holiday hours.

RESPONSE 5: The department is not interested in the detailed comings and goings of licensees, but department inspectors must know when a marijuana

business is generally open in order to conduct inspections, which may be done without notice to the licensee. In an effort to clarify the rule further, the department has amended ARM 42.39.311(3)(b) to reflect the duty to report "standard" operating hours.

As to Mr. Kajander's question on how changes in hours are reported, the department responds that a general email to the department or notification to the inspector will suffice.

COMMENT 6: Mr. Kajander commented on the premises alteration requirements found in ARM 42.39.311(5) and questions why prior approval for alterations is required.

RESPONSE 6: The department responds that this provision has been in rule and was transferred to the department; it is not a new requirement. Because material or substantial changes to a licensed premises require building, electrical, or plumbing permits - and the related code compliance that goes with each - the department will continue to require that proposed material or substantial changes are approved and are compliant. The continuation of this compliance requirement was specifically requested by the legislature's Economic Affairs Interim Committee at its December 9, 2021 meeting.

6. The effective date of the department's amendments and repeals is January 1, 2022.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State December 14, 2021

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the Montana State Firemen's Association's Petition for Declaratory Ruling that the Billings Logan International Airport firefighting staff qualify to participate in the Montana Firefighters' Unified Retirement System	)))))))	Docket No. DO 2021-2 DECLARATORY RULING

INTRODUCTION

1. This matter comes before the Montana Public Employees' Retirement Board (Board) upon the Montana State Firemen's Association (MSFA) Petition for Declaratory Ruling, requesting that the Board revisit its February 2021 Declaratory Ruling that the Aircraft Rescue Firefighters/Airfield Maintenance (ARFF/AFM) workers at the Billings Logan Airport (Airport) do not meet the statutory definition of "firefighter" at 19-13-104, MCA. The petition requests a reconsideration of the Board's original ruling of February 1, 2021 (Docket No. DO 2021-1), on the grounds that correction of a prior, incorrect decision based upon the assessment of new or overlooked evidence or authorities would give cause to issue a new ruling.

2. Having agreed to consider the MSFA petition, the resulting briefs and attached exhibits, as well as the Board's deliberations at the October 2021 meeting, constitute the record in this declaratory ruling proceeding.

BACKGROUND

3. On June 11, 2020, representatives of the MSFA appeared before the Board pursuant to 19-13-115, MCA, in order to discuss and advocate that the Public Employees' Retirement System (PERS) covered positions of ARFF/AFM workers at the Airport should instead be reported to and included in the Firefighters' Unified Retirement System (FURS). Present at this meeting were representatives of the City of Billings who opposed the MSFA's petition.

4. At the conclusion of this discussion, the Board moved unanimously to request that the parties utilize the provisions of 2-4-501, MCA, to petition for a declaratory ruling concerning whether the ARFF/AFM meet the definition of "firefighter" under 19-13-104, MCA, and are thus required to be reported as FURS covered positions. In accordance with this request, the MSFA filed a Petition for Declaratory Ruling with the Board on September 21, 2020. The Board responded by issuing an order on October 8th, 2020, setting the remainder of a briefing schedule.

5. Following briefing, the Board concluded in a February 1, 2021, Declaratory Ruling that the ARFF/AFM in Billings do not meet the statutory definition of "firefighter" under 19-13-104, MCA, because (1) they do not take a physical and mental exam under 7-33-4107(5), MCA, and (2) they are not "appointed" into their positions pursuant to 7-33-4106, MCA.

6. The MSFA filed a Petition for Judicial Review in the First Judicial District, Lewis and Clark County, on March 3, 2021. Prior to any action being taken on the petition by the District Court, the MSFA filed an unopposed Motion to Stay and Brief in Support, which argued that under 19-13-115, MCA, the MSFA has a statutory role in advising the Board on FURS-related matters and that a petition for a second declaratory ruling based in part upon this role could obviate the need for judicial review. The District Court granted a stay pending resolution of any future proceedings before the board on March 17, 2021.

7. On March 29, 2021, the MSFA filed the immediate Petition for Declaratory Ruling with the Board requesting a reconsideration of the Board's February ruling.

8. In July of 2021, the Board issued an order requesting three rounds of briefing. The parties' briefing was concluded on August 27, 2021, and the Board considered the arguments at its October 7, 2021 meeting.

FACTS

9. ARFF/AFM workers at the Airport perform a variety of job duties to include the repair and maintenance of airport grounds, buildings, facilities, and related equipment, and to train in and respond to aircraft and other airport emergencies which include responding to and suppressing fires.

10. ARFF/AFM minimum qualifications state that successful applicants must be able to obtain a Class B, Type II Commercial Driver's License (CDL) within 90 days of hire. CDL applicants, in turn, must undergo a physical examination by an independent medical provider to certify that the applicant is physically qualified to operate a commercial motor vehicle and has no condition that would interfere with the ability to perform normal tasks associated with operating such a vehicle. The City of Billings contracts with St. Vincent's Healthcare to conduct these CDL examinations, which consist of the following: height and weight measurement; blood pressure check; an audiogram (hearing); a vision and color vision test, urinalysis; and a physical examination by the provider.

11. City of Billings firefighter candidates are also required to undergo a medical examination at St. Vincent's Healthcare prior to hiring, which includes: height and weight measurement; blood pressure check; an audiogram (hearing); a vision test; an electrocardiogram (rhythm and electrical activity of the heart); a pulmonary function test; two-way chest x-ray and cervical spine x-ray; a wellness blood panel that includes a complete blood count, metabolic panel, lipid panel, thyroid panel, and prostate-specific antigen panel for men over 50; and a physical examination by the provider.

ANALYSIS

12. The Board "shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision…" 2-4-501, MCA. The ruling shall be published pursuant to 2-4-501, MCA and is subject to judicial review in the same manner as decisions or orders in contested cases. *Id.*

13. The Board has adopted the Attorney General's Model Procedural Rules governing declaratory rulings as provided in ARM 1.3.226 through 1.3.229. ARM 2.43.1401. "A party may seek a declaratory ruling from the agency when doubt exists as to how a statute or rule administered by an agency affects the party's legal rights." ARM 1.3.226.

14. A retirement plan and pension trust fund is established and maintained for FURS. 19-13-103, MCA.

15. The FURS retirement plan is an Internal Revenue Service, tax-qualified plan under Section 401(a) of the Internal Revenue Code.

16. As provided for in Article VIII, Section 15 of the Montana Constitution the Board must administer the FURS trust fund as "fiduciaries of system participants and their beneficiaries." Mont. Const. Article VIII, Section 15.

17. This fiduciary duty of the Board requires it to administer the FURS trust subject to the provisions of Title 19, chapters 2 and 13 of the Montana Code Annotated. 19-2-502, MCA. FURS members and membership eligibility is determined by the provisions of these chapters and the rules that the Board is authorized to establish for the administration, operation, and enforcement of FURS. 19-2-402 and 19-2-403, MCA.

18. Participation in FURS is mandatory for cities of the first and second class that employ full-paid firefighters. 19-13-210, MCA.

19. Billings is classified as a first class city pursuant to 7-1-4111, MCA, and all firefighters employed by the City of Billings Fire Department are members of FURS.

20. The term "firefighter" in FURS is defined as "a person employed as a full-paid or part-paid firefighter by an employer." 19-13-104(5), MCA.

21. Both "full-paid" and "part-paid" firefighters must meet the standards provided in 7-33-4107, MCA. 19-13-104(6) and (10), MCA.

22. Section 7-33-4107, MCA provides the qualifications for firefighters and holds that to qualify as a firefighter, an applicant: "(1) must be a citizen or lawful permanent resident of the United States; (2) must be at least 18 years of age; (3) must be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; (4) must possess or be eligible for a valid Montana driver's license; (5) shall pass a physical examination by a qualified physician, physician assistant, or advanced practice registered nurse, who is not the applicant's personal physician, physician assistant, or advanced practice registered nurse, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect the applicant's performance of the duties of a firefighter, including requirements described in 7-33-1902; (6) must be fingerprinted and a search must be made of the local, state, and national fingerprint files to disclose any criminal record; and (7) may not have been convicted of a crime for which the applicant could have been imprisoned in a federal or state penitentiary."

23. The physical examination required under 7-33-4107(5), MCA, "must be in writing, and a written determination of the examination must be filed with the city or town clerk. The determination of the examination must disclose the ability of the

applicant to perform the physical work usually required of firefighters in the performance of their duty." 7-33-4108, MCA.

24. The regulation that gives rise to the physical examination requirement to obtain a CDL, however, includes prefatory language introducing those physical requirements to indicate that the purpose is to determine whether "a person is physically qualified to drive a commercial motor vehicle[.]" *See* 49 CFR § 391.41(b).

25. The differing purposes of these respective examinations are illustrated by the fact that the CDL-specific exam does not include an electrocardiogram; a pulmonary function test; two-way chest x-ray and cervical spine x-ray; or a wellness blood panel that includes a complete blood count, metabolic panel, lipid panel, thyroid panel, and prostate-specific antigen panel for men over 50.

RULING

26. In making declaratory determinations pursuant to 2-4-501, MCA, it is not the role of the Board to insert what has been omitted or to omit what has been inserted. *See* 1-2-101, MCA. When interpreting a statute, the Board must presume the Legislature would not pass useless or meaningless legislation. *Rogers v. Lewis & Clark Cty*., 2020 MT 230, ¶ 32, 401 Mont. 228, ¶ 32, 472 P.3d 171, ¶ 32. The Board cannot ignore that the Legislature chose to include the requirement that—prior to hire—a firefighter candidate must undergo an examination to determine whether the applicant is free from any mental or physical condition that might adversely affect the applicant's performance of the duties of a firefighter. This examination is distinctly different from that performed on a CDL applicant to determine whether that person is physically qualified to drive a commercial motor vehicle.

27. Accordingly, ARFF/ARM workers do not meet the minimum qualifications under 7-33-4107, MCA, in order to fall within the FURS-specific definition of "firefighter" set forth in 19-13-104(5), MCA. Specifically, they do not meet the minimum statutory qualification within 7-33-4107(5), MCA, that they are determined to be "free from any mental or physical condition that might adversely affect the applicant's performance of the duties of a firefighter[.]"

28. Accordingly, the Board affirms its prior declaratory ruling that that Aircraft Rescue Firefighters/Airfield Maintenance (ARFF/AFM) workers at the City of Billings Logan Airport are not "firefighters" within the meaning of 19-13-104, MCA; and therefore, are not legally entitled to participate in the Firefighters' Unified Retirement System (FURS).

29. For the reasons stated above, ARFF/AFM workers are being properly reported by the City of Billings as PERS-covered employees.

DATED this 9th day of December 2021.

MONTANA PUBLIC EMPLOYEES'
RETIREMENT BOARD

/s/ Sheena Wilson
SHEENA WILSON, PRESIDENT

/s/ Maggie Peterson
MAGGIE PETERSON, VICE PRESIDENT

/s/ Robyn Driscoll
ROBYN DRISCOLL

/s/ Richard Hickel
RICHARD HICKEL

/s/ Sonja Woods
SONJA WOODS

/s/ Terry Halpin
TERRY HALPIN

NOTICE: Petitioner has the right to appeal this ruling by filing a petition for judicial review in district court within 30 days after service of this decision. Judicial review is conducted pursuant to 2-4-702, MCA.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 9th day of December 2021, in addition to an electronic copy sent by email, a true and correct copy of the foregoing was served by placing same in the U.S. mail, postage prepaid, addressed as follows:

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/s/ Kris Vladic
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Program Specialist

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2021. This table includes notices in which those rules adopted during the period June 25, 2021, through December 10, 2021, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2021, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2021 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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2-59-617 Semiannual Assessments - Supervisory Fees for Banks and Credit Unions, p. 1004, 1319
2-59-618 Renewal Fees of Mortgage Brokers, Lenders, Servicers, and Loan Originators, p. 1007, 1320

(State Lottery and Sports Wagering Commission)
2-63-621 Definitions - Places of Sale - Applications and Fees - Commission - Revocation or Suspension of License - Prizes, p. 1441, 1569

(Burial Preservation Board)
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6-264 Suitability in Annuity Transactions Act, p. 971, 1206
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6-266 Rates and Premiums - Payment or Benefits, p. 1573

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6-263 Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, p. 447, 919

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8-94-187 Administration of the Montana Coal Endowment Program (MCEP)–Planning Grants, p. 591, 872
8-94-189 Administration of the Community Development Block Grant Cares Act (CDBG-CV) Program, p. 813, 1049
8-94-190 Administration of the CDBG Program, p. 976, 1208
8-94-191 Administration of the Montana Historic Preservation Grant (MHPG) Program, p. 1357, 1768
8-111-188 Cash Advances, p. 815, 1053

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(Board of Public Education)
10-54-291 Transformation Learning Program, p. 1576

(Montana State Library)
10-102-2101 Essential Standards - Library Board, Governance, and Working With the Director - Serving the Community - Personnel - Standard Notification, Final Arbiter, and Appeal Process - Deferrals, p. 818, 1138

FISH, WILDLIFE AND PARKS, Department of, Title 12

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(Fish and Wildlife Commission)
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12-546 Implementation of the Commercial Use Cap on the Madison River, p. 395, 923
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12-553 Rest/Rotation and Walk/Wade Rules on the Madison River, p. 1609

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(Petroleum Tank Release Compensation Board)
17-416 Eligibility Determination for Petroleum Storage Tank Cleanup, p. 1095, 1771

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18-184 Motor Carrier Services Safety Requirements, p. 450, 875
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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in November 2021 appear. Potential vacancies from January 1, 2022 through March 31, 2022, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2021.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2021

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Behavioral Health			
Mr. Joseph Suchanic	Governor	New	11/15/2021
Missoula			12/31/2024
Qualifications (if required): Licensed Professional Counselor			
Ms. Amanda Walton	Governor	New	11/15/2021
Glendive			12/31/2024
Qualifications (if required): Certified Behavioral Health Peer Support Specialist			
Family Support Services Advisory Council			
Ms. Susan Brown	Governor	Jeannie Keller	11/15/2021
Helena			4/1/2022
Qualifications (if required): Commissioner of Insurances representative			
Ms. Jessie Counts	Governor	Danielle McCarthy	11/15/2021
Helena			4/1/2022
Qualifications (if required): OPI Representative			
Ms. Breanne Main	Governor	Sarah Goldsmith	11/15/2021
Harlem			4/1/2022
Qualifications (if required): District 5 parent rep			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2021

Appointee	Appointed By	Succeeds	Appointment/End Date
Family Support Services Advisory Council Cont.			
Mr. Jack O'Connor	Governor	New	11/15/2021
Helena			4/1/2022
Qualifications (if required): OPI coordinator of education of homeless children and youth			
Ms. Karen Underwood	Governor	David Munson	11/15/2021
Laurel			4/1/2022
Qualifications (if required): Early childhood intervention service provider			
Rep. Sue Vinton	Governor	Kathy Kelker	11/15/2021
Billings			4/1/2022
Qualifications (if required): Representative of the State Legislature			
Future Fisheries Review Panel			
Mr. David Cope	Governor	Tony Cate	11/15/2021
Ennis			6/30/2023
Qualifications (if required): licensed angler			
Ms. Karin Fischer Boyd	Governor	Chuck Dalby	11/15/2021
Bozeman			6/30/2023
Qualifications (if required): Geomorphologist			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2021

Appointee	Appointed By	Succeeds	Appointment/End Date
Future Fisheries Review Panel Cont.			
Mr. John Goodwin Helena Qualifications (if required): MT High School Student	Governor	Luca Welle	11/15/2021 12/30/1899
Mr. Michael Paul Johns Bozeman Qualifications (if required): Licensed angler	Governor	Bruce Farling	11/15/2021 6/30/2023
Mr. Richard Lane Missoula Qualifications (if required): Silviculture expertise	Governor	Terry Chute	11/15/2021 6/30/2023
Mr. Mike Newton Glendive Qualifications (if required): expertise in fisheries	Governor	Bill Wichers	11/15/2021 6/30/2023
Mr. Clint Peck Billings Qualifications (if required): conservation district representative	Governor	New	11/15/2021 6/30/2023
Mr. Ron Pierce Lolo Qualifications (if required): Fisheries Restoration Pro	Governor	Karin Boyd	11/15/2021 6/30/2023

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2021

Appointee	Appointed By	Succeeds	Appointment/End Date
Future Fisheries Review Panel Cont.			
Mr. Bill Semmens	Governor	New	11/15/2021
Helena			6/30/2023
Qualifications (if required): Department of Transportation Representative			
Water and Wastewater Operators' Advisory Council			
Mr. Nick Clos	Governor	Leo Malinak	11/15/2021
East Helena			9/30/2027
Qualifications (if required): Wastewater Operator			

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
Board of Barbers and Cosmetologists		
Mr. Tucker Landerman, Kalispell	Governor	3/1/2022
Qualifications (if required): Licensed barber		
Board of Chiropractors		
Dr. Gregory L. Pisk, Kalispell	Governor	1/1/2022
Qualifications (if required): Licensed Chiropractor		
Board of Horse Racing		
Senator Dale Mahlum, Missoula	Governor	1/1/2022
Qualifications (if required): Horse racing Industry		
Mr. Gary William Koepplin, Florence	Governor	1/1/2022
Qualifications (if required): District 5		
Mr. Shawn Real Bird, Crow Agency	Governor	1/1/2022
Qualifications (if required): District 2		
Board of Public Assistance		
Ms. Sharon Bonogofsky-Parker, Billings	Governor	1/5/2022
Qualifications (if required): Public member		
Ms. Danielle Shyne, Bozeman	Governor	1/5/2022
Qualifications (if required): Attorney member		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
Board of Public Education		
Ms. Darlene Schottle, Bigfork	Governor	2/1/2022
Qualifications (if required): District 1 Independent		
Board of Regents of Higher Education		
Mr. Robert Nystuen, Lakeside	Governor	2/1/2022
Qualifications (if required): District 1, Independent		
Judicial Nominations Commission		
Mrs. Nancy Zadick, Great Falls	Governor	1/1/2022
Qualifications (if required): Lay member who is not a judge or attorney, active or retired		
Montana Arts Council		
Ms. Cynthia L. Andrus, Bozeman	Governor	2/1/2022
Qualifications (if required): Public Representative		
Mr. John Paul Gabriel Jr., Bozeman	Governor	2/1/2022
Qualifications (if required): Public Representative		
Ms. Tracy Linder, Molt	Governor	2/1/2022
Qualifications (if required): Public Representative		
Ms. Elizabeth Albers, Missoula	Governor	2/1/2022
Qualifications (if required): Public Representative		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
Montana Arts Council Cont.		
Dr. Renee Westlake, Bozeman	Governor	2/1/2022
Qualifications (if required): Public Representative		
Montana Children's Trust Fund Board		
Ms. Tracy Moseman, Helena	Governor	1/1/2022
Qualifications (if required): State government agency involved in education		
Mr. James Scott Wheeler, Kalispell	Governor	1/1/2022
Qualifications (if required): Member		
Ms. Patricia Butler, Helena	Governor	1/1/2022
Qualifications (if required): State government agency involved in social work		
Ms. Kristina A. Davis, Great Falls	Governor	1/1/2022
Qualifications (if required): Member		
Montana Grass Conservation Commission		
Mr. Richard Louis Stuker, Chinook	Governor	1/1/2022
Qualifications (if required): Member who holds active grazing preference rights within a state district		
Montana Small Business Development Center Advisory Council		
Mr. Paddy Fleming, Bozeman	Governor	2/1/2022
Qualifications (if required): Economic Development Professional		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
Montana Small Business Development Center Advisory Council Cont.		
Mr. Reed W. Bassett, Great Falls	Governor	2/1/2022
Qualifications (if required): Small Business Lender		
Mr. Karl Drga, Miles City	Governor	2/1/2022
Qualifications (if required): Small Business Lender		
Mr. Joe Fanguy, Missoula	Governor	2/1/2022
Qualifications (if required): Economic Development Professional		
Mr. Matt Harrington, Browning	Governor	2/1/2022
Qualifications (if required): Small Business Owner		
Ms. Debbie Singer, Billings	Governor	2/1/2022
Qualifications (if required): Economic Development Professional		
Mr. Joe Willauer, Butte	Governor	2/1/2022
Qualifications (if required): Economic Developer		
Potato Commodity Advisory Committee		
Mr. Jonathan Schutter, Manhattan	Governor	3/1/2022
Qualifications (if required): Potato Producer		
Public Employees' Retirement System		
Ms. Sonja Woods, Miles City	Governor	3/31/2022
Qualifications (if required): Active member of the public retirement system		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
State Apprenticeship Advisory Council		
Mr. Dean Bentley, Butte Qualifications (if required): Chair SWIB Member	Governor	3/1/2022
Mr. Barry Reddick, Helena Qualifications (if required): Non-Union Member	Governor	3/1/2022
Mr. Dale Carpenter, Butte Qualifications (if required): Union Member	Governor	3/1/2022
Mr. Chris Hopkins, Miles City Qualifications (if required): Non-Union Member	Governor	3/1/2022
Ms. Margaret McManus, Missoula Qualifications (if required): Non-Union Member	Governor	3/1/2022
Mr. Mykal D. Jorgenson, Billings Qualifications (if required): Union Member	Governor	3/1/2022
Mr. Brock Tessman, Helena Qualifications (if required): Public Member	Governor	3/1/2022
Ms. Vicki Dickenson, Helena Qualifications (if required): Union Member	Governor	3/1/2022
Mr. Chris McGowan, Helena Qualifications (if required): Union Member	Governor	3/1/2022

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
State Apprenticeship Advisory Council Cont.		
Mr. Scott Lemert, Bozeman	Governor	3/1/2022
Qualifications (if required): Non-Union Member		
State Lottery Commission		
Mr. John Tarr, Helena	Governor	1/1/2022
Qualifications (if required): Public Representative		
Mr. Thomas M. Keegan, Helena	Governor	1/1/2022
Qualifications (if required): Member		
Ms. Jean L. Price, Great Falls	Governor	1/1/2022
Qualifications (if required): Public Representative		
Traumatic Brain Injury Advisory Council		
Mr. Ian Ray Elliot, Billings		
Qualifications (if required): Advocate for Brain Injured Persons	Governor	1/1/2022
Dr. Braxton Norwood, Kalispell		
Qualifications (if required): Representative of injury control	Governor	1/1/2022

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
Youth Justice Council		
Mr. Qasim Walid Abdul-Baki, Helena	Governor	3/1/2022
Qualifications (if required): Law enforcement and juvenile justice agencies		
Mr. Randy Shipman, Dillon	Governor	3/1/2022
Qualifications (if required): Public agency concerned with delinquency prevention or treatment		
Ms. Geri Small, Lame Deer	Governor	3/1/2022
Qualifications (if required): Tribal Representative		
Mr. Derek J. VanLuchene, Helena	Governor	3/1/2022
Qualifications (if required): Board of Crime Control member		
Ms. Georgia J. Cady, Columbus	Governor	3/1/2022
Qualifications (if required): Representative of victim or witness advocacy groups		
Mr. Tim Brurud, Havre	Governor	3/1/2022
Qualifications (if required): Nonprofit		
Honorable Mary Jane McCalla Knisely, Billings	Governor	3/1/2022
Qualifications (if required): Law enforcement and juvenile justice agencies		
Ms. Rae Gyn Trombley, Great Falls	Governor	3/1/2022
Qualifications (if required): Under the age of 28		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
Youth Justice Council Cont.		
Ms. Minnetta Armstrong, Browning	Governor	3/1/2022
Qualifications (if required): Nonprofit		
Ms. Kimberly Michelle Leighton, Helena	Governor	3/1/2022
Qualifications (if required): Nonprofit		
Ms. Jazmyn Saunders, Missoula	Governor	3/1/2022
Qualifications (if required): Under the age of 28		
Mr. Chase Comes At Night, Missoula	Governor	3/1/2022
Qualifications (if required): Under the age of 28		
Ms. Rhonda Lindquist, Helena	Governor	3/1/2022
Qualifications (if required): Public Agency concerned w delinquency prevention or treatment		
Mr. Kevin Buerkle, Havre	Governor	3/1/2022
Qualifications (if required): Law enforcement and juvenile justice agencies		
Mr. Michael Chavers, Billings	Governor	3/1/2022
Qualifications (if required): Representative of programs that are alternatives to incarceration		
Dr. Tamara Greeling, Billings	Governor	3/1/2022
Qualifications (if required): Parent of a youth involved in the judicial system		
Mrs. Holly Mook, Helena	Governor	3/1/2022
Qualifications (if required): Experience and competence in addressing problems related to school violence and vandalism		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2022 THROUGH MARCH 31, 2022

Board/Current Position Holder	Appointed By	Term End
Youth Justice Council Cont.		
Dr. Emily Sallee, Frenchtown	Governor	3/1/2022
Qualifications (if required): Person licensed or certified with expertise and competence		
Mr. Robert Scheben, Bonner	Governor	3/1/2022
Qualifications (if required): Experience and competence in addressing problems related to school violence and vandalism		
Ms. Gabrielle Shulman, Missoula	Governor	3/1/2022
Qualifications (if required): Representative of programs that are alternatives to incarceration		
Mrs. Patricia Steinwand, Helena	Governor	3/1/2022
Qualifications (if required): Volunteer who works with delinquents or potential delinquents		
Mr. Isaac Nehring, Helena	Governor	3/1/2022
Qualifications (if required): Under the age of 28		
Commissioner George Real Bird III, Hardin	Governor	3/1/2022
Qualifications (if required): Local Government		
Ms. Ava Parsons, Missoula	Governor	3/1/2022
Qualifications (if required): Under the age of 28		

MONTANA ADMINISTRATIVE REGISTER

2021 ISSUE NO. 24
DECEMBER 23, 2021
PAGES 1815-2006

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